

**NO. 14-14-00824-CV**

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**IN THE COURT OF APPEALS  
FOR THE FOURTEENTH JUDICIAL DISTRICT OF TEXAS  
HOUSTON, TEXAS**

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**STATE FARM LLOYDS**

*Appellant*

**v.**

**CANDELARIO FUENTES AND MARIA FUENTES**

*Appellees*

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On Appeal from Cause No. 2010-61039  
In the 152nd District Court of Harris County, at Houston, Texas

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**APPELLANT'S BRIEF**

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**ORAL ARGUMENT REQUESTED**

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## **STATEMENT OF THE CASE**

Appellees Candelario and Maria Fuentes (hereinafter, “Plaintiffs”) filed suit against Appellant State Farm Lloyds (hereinafter “State Farm”) on September 17, 2010. CR 5. Plaintiffs brought claims for breach of contract, violations of the Unfair Settlement Practices and Prompt Payment provisions of the Texas Insurance Code, fraud, and breach of the duty of good faith and fair dealing. CR 11-14.

The jury returned a verdict on July 30, 2013. RR 11:111-14; CR 183-207; App. A1-25. On August 23, 2013, State Farm moved for entry of judgment in its favor. CR 208-12. Over a year later, on September 15, 2014, the trial court disregarded the jury’s answers to two questions, and rendered judgment in favor of Plaintiffs. CR 432-36; App. B1-5. On October 15, 2014, State Farm filed a motion for a new trial, which was overruled by operation of law on November 25, 2014. CR 449-61; App. F1. On November 7, 2014, the trial court entered an amended judgment disregarding the jury’s answers to two questions and rendering judgment in favor of Plaintiffs. CR 588-93; App. D1-6. State Farm appeals the judgments entered in favor of Plaintiffs and the denial of its motion for a new trial or remittitur. CR 567-73, 598-606.

## **STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to Texas Rule of Appellate Procedure 38.1(e), State Farm respectfully requests oral argument. State Farm believes that oral argument will be helpful to the court in analyzing the three issues presented in this appeal. In particular, the rulings that State Farm challenges in this case involve the trial court (1) disregarding a jury finding and (2) rejecting an excessive demand defense despite a demand wildly out of proportion to actual damages and fees. Given the extraordinary nature of these rulings, oral argument would be appropriate to address these issues.

## **ISSUES PRESENTED**

1. Whether the trial court erred in disregarding the jury's answers to two questions and by entering judgment in favor of Plaintiffs where the jury found that Plaintiffs were first to materially breach their duties under the insurance policy.

2. Whether the trial court erred in denying State Farm's offer of evidence in support of its excessive demand defense, when Plaintiffs had demanded payment for damages and attorneys' fees far in excess of what they ultimately sought at trial.

3. Whether the trial court erred in denying State Farm's motion for remittitur or, alternatively, a new trial to correct the erroneous award of attorneys' fees and prejudgment interest given Plaintiffs' excessive demand.

## **STATEMENT OF FACTS**

This is a Hurricane Ike residential insurance coverage case that concerns whether State Farm adequately compensated Plaintiffs for damage that occurred on or about September 12th and 13th, 2008. CR 53. Plaintiffs allege that the exterior of their house sustained damage during Hurricane Ike. *Id.* Plaintiffs also allege that water intrusion through the roof caused damage to the interior, an allegation made for the first time when they filed suit. *Id.* Though State Farm paid Plaintiffs to completely replace their roof and to repair or replace several other items, Plaintiffs allege that they were not adequately compensated, also an allegation made for the first time when Plaintiffs filed suit. RR 21:12-13, 63, 65; CR 56. The applicable policy was in effect from July 20, 2008 to July 20, 2009 and provided \$71,800 in dwelling coverage and \$7,180 in dwelling extension coverage. RR 19:11; App. J1.

### **A. The Damage to Plaintiffs' House and Plaintiffs' Initial Claim of Damages**

Hurricane Ike passed through Texas in September of 2008. RR 4:154. In preparation, Plaintiffs evacuated to a relative's house in San Antonio. *Id.* On September 12th and 13th, 2008, the hurricane hit Harris County, Texas, and caused damage to Plaintiffs' house. CR 53. The policy imposed duties on Plaintiffs to promptly inform State Farm or its agent of their loss, to take steps to protect the property from further damages, and to document damages. RR 19:26-27.

The first person to inspect the damage to the house was Plaintiffs' adult daughter, Perla Santos. RR 4:124, 154. Santos, who has experience working in the insurance industry, visited the house shortly after the storm. *Id.* Santos toured the property and took a number of pictures documenting the damage. RR 4:154-55. Santos also contacted Plaintiffs' insurance agent to make the claim. RR 4:167-68.

On September 24, 2008, Santos spoke to a State Farm representative and discussed the damages to Plaintiffs' home. RR 20:15. The only damage reported by Santos was personal property damage in the form of food loss and exterior damage to the roof and fence. *Id.* Santos did not report any interior damage. *Id.* Additionally, none of the photographs that were taken by Santos and later submitted to State Farm documented interior damage. RR 3:179; 4:118, 155.

**B. State Farm's Inspection of Plaintiffs' House**

Santos indicated to State Farm that Plaintiffs wanted to be present for an inspection, that State Farm should not inspect the house without an appointment, and that State Farm should call Plaintiffs. RR 20:15. Over the next two months, State Farm made several unsuccessful attempts to contact Plaintiffs. RR 20:14-15. On November 11, 2008, Mr. Dustin Namirr, an independent adjuster acting on behalf of State Farm, was able to reach Mr. Fuentes by telephone and scheduled an inspection for the next day. RR 20:14.



Mr. Namirr conducted an inspection of Plaintiffs' property on November 12, 2008. RR 3:185; 21:13. On the exterior, Mr. Namirr observed that a large tree top had fallen on the roof and that the roof needed to be replaced. RR 3:132-34; 20:13-14. Mr. Namirr also observed and included in his estimate exterior damage to a fence, shed, window and window screen, and the house eave. RR 3:134-35; 20:13-14.

Mr. Namirr also inspected the interior of the house and Mr. Fuentes showed him the master bedroom and the laundry room. RR 4:168-70. However, the only specific damage Mr. Fuentes testified showing Mr. Namirr was ceiling damage in the living room caused by an air conditioner and kitchen damage from water lines. *Id.* Mr. Namirr did not observe any interior water damage from Hurricane Ike during his inspection of the house. RR 3:191.

**C. State Farm's Payment for Damages**

At the conclusion of his inspection, Mr. Namirr provided Plaintiffs with an estimate for exterior damages in the amount of \$7,856.75. RR 20:14, 29-34; 4:209. After subtracting depreciation and the deductible, Mr. Namirr provided Plaintiffs with two checks, one for \$4,988.63 for the exterior damage and one for \$350 for food loss. RR 20:91, 93. Plaintiffs understood that they were being compensated for exterior damage, including replacement of the roof. RR 4:207-08, 212-13; 5:19-20. They further understood that they would receive the

depreciation of approximately \$1,500 upon replacement of the damaged roof. RR 5:19-20, 39. Although Plaintiffs promptly deposited both checks, they did not replace or repair their roof. RR 4:207; 5:39; 21:105-06. Indeed, as of the time of trial in 2013, approximately four-and-a-half years later, Plaintiffs had still not replaced their roof. RR 4:205-07; 5:39.

**D. Plaintiffs' Petition and Demand**

Though Plaintiffs promptly received payment for their roof and other exterior damages, and understood the basis of that payment, they never told their agent or State Farm that they had not been adequately compensated for Hurricane Ike damage. RR 4:197-98. Instead, State Farm first received notice of Plaintiffs' complaints shortly after September 17, 2010, when Plaintiffs filed their petition alleging that "[w]ater intrusion through the roof caused significant damage through the entire home including, but not limited to, the home's ceilings, walls, insulation, and flooring." CR 5, 7-8.

Following the petition, on November 12, 2010, Plaintiffs' counsel sent a letter stating "demand is hereby made that within sixty (60) days from your receipt of this correspondence, the following amounts be paid":

1. \$230,000.00 in economic damages, which you should note may increase as the damages have yet to be fully repaired;
2. \$50,000.00 in mental anguish damages; and
3. \$112,000.00 for expenses, including attorney's fees, which you should note will increase as we prepare this case for trial.

RR 39:9-11. The letter explained that it was a “conservative effort” to resolve the litigation and that if not paid within 60 days, Plaintiffs would seek actual damages, mental anguish damages, prejudgment interests, attorney’s fees, and treble damages and additional penalties. RR 39:10.

Despite demanding \$230,000.00 in economic damages, Plaintiffs only claimed economic damages of \$61,761.75 at trial. RR 6:22. Approximately \$18,000 of those damages were for unrepaired exterior damages, including the Plaintiffs’ roof, shed, and fence, for which State Farm had already paid \$7,856.75 less the deductible and depreciation. RR 6:16-20, 22; 21:26-38, 65. Additionally, despite the November 12, 2010 letter demanding \$112,000 for expenses, at trial Plaintiffs only claimed approximately \$240 for attorney’s fees incurred through the date of the letter. RR 10:6-7; 18:40; App. E3-4.

In response to Plaintiffs’ letter, State Farm pled the excessive demand defense. CR 74. The trial court excluded all evidence and testimony regarding demand letters in its order on motions in limine. In a bill of exception, State Farm attempted to offer into evidence Plaintiffs’ November 12, 2010 letter and the testimony of Charles L. Levy in support of its excessive demand defense. RR 10:4-11; App. E1-8. The trial court denied State Farm’s offer. RR 10:10-11; App. E7.

**E. Verdict and Judgment**

On July 30, 2013, the trial court entered a directed verdict in State Farm's favor on the personal property claims. RR SUPP 1:6. On July 30, 2013, the jury returned its verdict. RR 11:111-14; CR 183-207; App. A1-25. The jury found that both Plaintiffs and State Farm had failed to comply with the insurance policy (verdict question 1), but that Plaintiffs' breach of the policy occurred first (verdict question 2). CR 185-86; RR 11:111; App. A3-4. The jury awarded \$18,818 as the difference between the amount paid by State Farm to Plaintiffs and the amount State Farm should have paid under Plaintiffs' policy. CR 187; RR 11:111; App. A5. In addition, the jury awarded \$27,000 in mental anguish damages, \$7,527 in unfair competition damages, and \$254,545 in attorney's fees for representation through trial. CR 189, 196; RR 11:111-12; App. A7, A14.

On August 23, 2013, State Farm filed a motion to enter judgment, arguing that, given the jury's finding that Plaintiffs materially breached the policy first, State Farm was entitled to judgment as a matter of law. CR 208-12. Thirteen months later, on September 15, 2014, the trial court entered judgment in favor of Plaintiffs. CR 432-36; App. B1-5. In its judgment, the trial court stated that it was disregarding the answers to verdict questions 1(b) and 2, but provided no explanation for this decision. CR 432-33; App. B1-2, C.

On October 15, 2014, State Farm filed a Motion for New Trial and Remittitur, arguing that State Farm was entitled to a new trial because no reasonable jury could have found that State Farm was liable for interior damage. CR 449-61. State Farm also argued that it was entitled to remittitur or a new trial regarding attorney's fees under the excessive demand doctrine. *Id.* State Farm's motion was denied as a matter of law because the trial court did not act on it.

On November 7, 2014, the trial court entered an amended judgment resolving a typographical error regarding the date of the prior judgment and making adjustments to the interest calculations. CR 588-593; App. D1-6; RR 14:5-6.

### **SUMMARY OF ARGUMENT**

I. The trial court erred in disregarding the jury's findings in order to deny State Farm's motion for judgment and enter judgment for Plaintiffs. On the verdict form, the jury plainly stated its finding that Plaintiffs were first to materially breach the insurance policy. CR 185-86. It is a fundamental principle of contract law that when one party to a contract commits a material breach, the other party is discharged or excused from further performance. Without explanation, the trial court disregarded this finding to enter judgment for Plaintiffs. This was error.

To begin with, the trial court erred because it had no authority to disregard jury findings absent a motion from Plaintiffs – and there was no such motion.

Moreover, even if procedurally proper, there was no evidentiary basis to disregard the jury findings. A jury finding must be upheld if there is any evidence to support it, and here there was substantial evidence to support the finding that Plaintiffs breached the agreement before any breach by State Farm found by the jury. In particular, the jury could have concluded that Plaintiffs failed to take appropriate temporary actions to protect their property from further interior damages (by, for example, tarping the roof), failed to replace or repair the roof after receiving payment from State Farm, failed to immediately provide notice of the interior damages, and/or failed to document their interior damages. Indeed, it is undisputed that prior to litigation, Plaintiffs never formally reported interior damage to State Farm or their agent and that Plaintiffs did not replace or even repair their roof despite having been compensated to do so.

Even assuming that some of Plaintiffs' interior damages were caused during Hurricane Ike, the jury could have found that Plaintiffs' breaches prejudiced State Farm's ability to discover and distinguish Hurricane Ike damage from non-hurricane damage or subsequent damage. That prejudice was apparent in this case because despite not reporting interior water damage during the adjustment of their claim and not taking steps to prevent water damage after the hurricane, Plaintiffs asserted that any evidence of interior water damage submitted at trial was caused by Hurricane Ike and not subsequent weather events over the nearly five years

between the date of loss and trial. Thus, there was evidence of material breaches by Plaintiffs that pre-dated any supposed breach by State Farm, and the jury's finding could not properly be disregarded.

II. The trial court erred in denying State Farm's offer of evidence in support of its excessive demand defense and in denying State Farm's motion for new trial or remittitur. The excessive demand defense provides that a creditor who makes an excessive demand is not entitled to attorneys' fees, where excessive is defined as unreasonable or in bad faith. State Farm pled the excessive demand defense and sought to introduce Plaintiffs' November 12, 2010 letter demanding payment of \$230,000 in economic damages and \$112,000 of expenses, including attorney's fees, incurred through the date of the letter. This letter would have shown that Plaintiffs acted unreasonably and in bad faith by (1) demanding economic damages vastly in excess of their policy limits and over three times what they ultimately sought at trial; and (2) demanding \$112,000 in expenses when they ultimately sought only \$240 of expenses for attorneys' fees incurred as of the date of the demand letter. Because of the egregious amount of the demand, it was excessive as a matter of law. Accordingly, the trial court should have ordered Plaintiffs to remit attorneys fees and prejudgment interest or face a new trial. At a minimum, it is probable that the evidence would have resulted in a different judgment, and therefore State Farm is entitled to a new trial on this issue.

## **ARGUMENT**

### **I. THE TRIAL COURT ERRED IN DISREGARDING THE JURY'S FINDING OF A PRIOR MATERIAL BREACH**

“It is a fundamental principle of contract law that when one party to a contract commits a material breach of that contract, the other party is discharged or excused from further performance.” *Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 196 (Tex. 2004). Here, the jury found that Plaintiffs were first to materially breach their duties under the insurance policy contract. CR 185-86; A3-4. Specifically, the jury was asked whether Plaintiffs and State Farm “fail[ed] to comply with the insurance policy,” with the explanation that “[a] failure to comply must be material” and for the Plaintiffs’ breach to be material, it must result in “prejudice[]” to State Farm. CR 185; App. A3. The jury answered “yes” for both Plaintiffs and State Farm, finding that each committed a material breach. *Id.* The jury was then asked: “Who failed to comply with the insurance policy first?” and the jury wrote: “Calendario Fuentes and Maria Fuentes.” CR 186; App. A4. Thus, the jury’s answers on the verdict form expressly state that Plaintiffs committed a material breach and did so first. Accordingly, State Farm was entitled to judgment in its favor.

However, the trial court disregarded the jury’s findings and entered judgment for Plaintiffs, providing no explanation for this decision. This was error. CR 432-33; App. B1-2, C.



**A. The Trial Court Did Not Have Authority to Reject the Jury's Finding on Its Own Initiative**

As a predicate matter, the trial court erred in disregarding the jury's finding because Plaintiffs never filed a motion for the court to do so. Under Rule 301 of the Texas Rules of Civil Procedure, "[t]he judgment of the court shall conform to ... the verdict," and the court can "disregard any jury finding" *only* upon "motion and notice." TEX. R. CIV. P. 301. Based on this rule, it is well established that a trial court is not "empowered to disregard a jury finding on a material issue on its own initiative and in the absence of proper motion and notice." *Arch Const., Inc. v. Tyburec*, 730 S.W.2d 47, 51 (Tex. App.—Houston [14th Dist.] 1987, writ denied); *see also, e.g., Law Offices of Windle Turley, PC v. French*, 140 S.W.3d 407, 414 (Tex. App.—Fort Worth 2004, no pet.) ("The record does not reflect a motion to modify or to disregard the jury's findings, and the trial court cannot disregard the jury's findings and enter a different judgment on its own initiative."). Here, Plaintiffs did not file a motion for judgment notwithstanding the verdict. Rather, the trial court simply denied State Farm's motion for entry of judgment by disregarding the jury's finding. Because the trial court had no authority to do so, its decision should be reversed.

**B. There is Evidence to Support the Jury's Finding of Prior Material Breach**

Even if the issue were properly raised as a procedural matter, there was no basis to disregard the jury's findings. "A trial court may disregard a jury finding only if it is unsupported by evidence or if the issue is immaterial." *Nat'l City Bank of Indiana v. Ortiz*, 401 S.W.3d 867, 883 (Tex. App.—Houston 2013, pet. denied). As discussed below, there is more than sufficient evidence in the record to support the jury's finding that Plaintiffs were first to breach their insurance policy and this finding was not immaterial.

Texas Rule of Civil Procedure 301 provides that a trial court may "disregard any jury finding on a question that has *no support* in the evidence." TEX. R. CIV. P. 301 (emphasis added). A trial court may not "disregard a jury's answer because it is against the great weight and preponderance of the evidence." *Alm v. Aluminum Co. of Am.*, 717 S.W.2d 588, 594 (Tex. 1986). In determining whether there is no evidence, "all testimony must be considered in a light most favorable to the party against whom the motion is sought and every reasonable intendment deducible from the evidence is to be indulged in that party's favor." *Dowling v. NADW Mktg., Inc.*, 631 S.W.2d 726, 728 (Tex. 1982). "If more than a scintilla of evidence supports the jury finding, it must be upheld. Thus, appellate courts must consider the evidence and inferences as they tend to support *the verdict* and not with a view toward supporting *the judgment*." *Mancorp, Inc. v. Culpepper*, 802

S.W.2d 226, 228 (Tex. 1990) (emphasis original, citations omitted). Here, there is far more than a scintilla of evidence to support the jury's findings.

As an initial matter, there was evidence from which the jury could conclude that Plaintiffs had contractual duties to perform. Plaintiffs' Texas homeowners policy issued by State Farm was admitted into evidence at trial. The policy provided in relevant part:

### **SECTION I – CONDITIONS**

- 2. Your Duties After Loss.** After a loss to which this insurance may apply, you shall see that the following duties are performed:
- a. give immediate notice to us or our agent . . . .
  - b. protect the property from further damage or loss, make reasonable and necessary temporary repairs required to protect the property, keep an accurate record of repair expenditures;
  - c. prepare an inventory of damaged or stolen personal property. Show in detail the quantity, description, age, replacement cost and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;

RR 19:26-27; App. J16-17. Thus, the policy set forth "conditions" that imposed "duties" on Plaintiffs as insureds, including duties to (a) provide immediate notice of loss; (b) protect the property from further damage and make reasonable repairs; and (c) document the loss.

There was substantial evidence that Plaintiffs breached each of these duties, and certainly more than the “mere scintilla” of evidence that would allow the trial court to disregard the jury finding.

*First*, the evidence was uncontested that Plaintiffs took no steps to protect their property from further damage immediately following the hurricane, either by tarping or covering their roof. Likewise, the evidence was uncontested that Plaintiffs failed to protect the property from additional damage by replacing or repairing the roof after receiving a check from State Farm. RR 4:205-07; 5:39; 21:65. Plaintiffs received a check from Mr. Namirr for \$4,988.63, which included the cost for the replacement of the “total roof.” RR 21:65. Yet, it is undisputed that Plaintiffs did not have their roof replaced following Hurricane Ike. RR 4:205-07; 5:39. Plaintiffs’ own expert, Peter Rabner, who examined Plaintiffs’ roof in June 2013, testified that Plaintiffs did not replace their roof:

Q: And did [Mr. Fuentes] replace the roof following Hurricane Ike based on your observations and inspection?

A. No.

\* \* \*

Q: And did Mr. Fuentes make any repairs to the roof following Hurricane Ike that you are aware of?

A. Not that I can recall having seen specific. I still saw missing shingles, damaged shingles.

RR 5:127. Likewise, State Farm's expert, Michael Berryman, who inspected Plaintiffs' home in May 2013, told the jury, "[t]here is still a Hurricane Ike damaged roof that has never been removed and replaced despite the fact that it was estimated and paid for by State Farm." RR 9:244. Significantly, even according to the estimate from Plaintiffs' expert, Plaintiffs were paid a sufficient amount to repair the roof. RR 6:16-20.

State Farm presented testimony showing that this failure to replace the roof violated the terms of the policy because it was unreasonable. State Farm's expert, Charles Levy, explained that based on their duties under the policy, Plaintiffs should have had their roof replaced:

Q. Based on the policy and the duties that the insured has, what responsibilities do you believe that an insured like Mr. and Mrs. Fuentes would reasonably exercise after a loss of this nature?

\*\*\*

A. You have an insured that has filed a roof claim. And the insurance company has agreed to replace the roof. It would be reasonable and expected that either the roof would be replaced or some action would be taken to obtain information that would then allow you to replace the roof. You don't leave a roof that is in need of being replaced with no work done to it for five years . . . .

RR 9:114. In addition, Mr. Levy stated that "I don't believe that you would expect someone to wait five years to repair or replace an item that needed to be replaced that if you didn't do that additional damage could take place." RR 9:109.

Because it is Plaintiffs' contention that water leaked through the roof and caused interior damage, the jury could have reasonably inferred that Plaintiffs failed to mitigate their interior damages by making either temporary repairs (e.g., tarping) or by replacing or repairing their roof when paid by State Farm, and that weather events preceding State Farm's alleged breach caused additional interior water damage. This conclusion is further bolstered by evidence that Plaintiffs did not immediately report or document interior damage, as discussed below.

The jury could also have found that these additional interior damages prejudiced State Farm by preventing it from accurately assessing the damage to Plaintiffs' house caused by Hurricane Ike. Plaintiffs' own expert acknowledged that some of Plaintiffs' alleged damages could have been the result, at least in part, of causes other than Hurricane Ike. *See, e.g.*, RR 5:122, 135-36, 138, 159-60. In particular, any interior water damage may have occurred due to Plaintiffs' failure to repair their roof. And damages caused by this failure are not compensable because, as Plaintiffs conceded (CR 427), the policy excludes damages caused by neglect. RR 19:24. Given Plaintiffs' failure to repair their roof, it was impossible for Plaintiffs' expert to determine what damage was caused by Hurricane Ike and what was caused by other events. The most he could do was try to identify water damage from weather events. For example, Mr. Rabner testified:

Q. Okay. So, it is your testimony that water got under the shingles during the wind and the water then penetrated nail holes through

the shingles, through the felt paper, through the decks and caused that damage in Photo 21 and 22; is that your opinion?

A. That is one of the ways that water would get in there.

Q. Is that your opinion that that happened here?

\* \* \*

A. That is what I – I believe, yes. Because we know the water entered in there somehow. We know that water – the holes we thought that there was water at this house. So, it is water damage. Where does that water come from is either a broken pipe or from rain from the roof. We weren't told there was a broken pipe there. That leaves the rain. So, it comes in somehow through the rain.

RR 5:144. In short, at best, Plaintiffs' expert was able to identify only water damage due to rain; he was not able to attribute it specifically to Hurricane Ike, as opposed to water damage that has occurred due to Plaintiffs' failure to repair their roof for nearly five years. RR 5:122, 5:135-36, 5:138, 5:159-60. Accordingly, the jury could have found – and there was evidence to support a finding – that Plaintiffs' own breach caused some of the alleged damages and that this breach prejudiced State Farm by making it difficult or impossible to separate out Hurricane Ike damages from those caused by other sources. Indeed, because the jury awarded Plaintiffs less than one-third of the damages they requested, it is reasonable to assume that the jury concluded that only some of the claimed damages were caused by Hurricane Ike.

*Second*, there was evidence that Plaintiffs did not provide immediate notice or properly document the supposed interior damages. Before Plaintiffs had even

returned home after Hurricane Ike, their daughter Perla Santos returned to the house to inspect the damage. RR 4:154. Santos, who has experience working in the insurance industry, toured the property, contacted Plaintiffs' insurance agent, and filed the initial claim. RR 4:124, 154-55, 167-68. On September 24, 2008, Santos also spoke with a State Farm representative and reported Plaintiffs' damages as follows: (1) "Exterior damage: roof / fence / tree on [vehicles]"; (2) "Personal property damage: food"; and (3) "Interior damage: **none**." RR 21:14 (emphasis added). Similarly, although Santos took a number of pictures to document the initial damage, the pictures that were submitted to State Farm were only of the exterior. RR 3:179; 4:118, 155. Though State Farm argued that this indicates there was no interior damage due to Hurricane Ike, to the extent the jury believed otherwise, the jury could also have believed that Plaintiffs' failure to promptly report and document those damages constituted a breach of the policy.

As to prejudice, the jury could also have found that failure to promptly apprise State Farm of the interior damages or to document the interior damages impaired State Farm from accurately assessing the damage to Plaintiffs' house. Indeed, Plaintiffs themselves argued that photographs of the interior of Plaintiffs' home would have assisted in assessing Plaintiffs' claim. RR 3:123 ("[Plaintiffs' Attorney:] Okay. Do you think it would help the jury understand what was going on at the Fuentes' home ... if they had photographs of the interior? [Mr. Namirr:]



I -- I guess so. I mean, it would.”). Likewise, the jury could have inferred that had Plaintiffs promptly reported their interior damages, State Farm would have known to look specifically for such damages and approve or deny payment for them as appropriate under the policy.

**C. There Is Evidence to Support the Jury’s Finding that Plaintiffs’ Breach Occurred First**

There is far more than a scintilla of evidence to support the jury’s finding that the Plaintiffs breached their policy first. The jury could have found that Plaintiffs failed to provide immediate notice or properly document their supposed interior damages before Mr. Namirr even arrived to inspect the property. For example, Santos failed to report interior damage on September 24, 2008 when she first spoke with State Farm. RR 21:14. The jury could also have found that Plaintiffs’ failure to temporarily protect their roof or take other steps to mitigate damages before Mr. Namirr arrived to inspect the property was a breach of their obligations under the policy. For example, the evidence shows that, even five years later, the Plaintiffs had not repaired their roof or even asked somebody to provide them with an estimate for repairing the roof. RR 4:205-6; 5:39, 127; 9:244. Thus, even assuming the jury found that State Farm breached on the date Mr. Namirr inspected Plaintiffs’ house, there is evidence to support a finding that Plaintiffs breached before that time.

In any event, the jury need not have concluded that State Farm breached on the date Mr. Namirr inspected Plaintiffs' house. There was significant evidence in the record that the Plaintiffs did not report or document interior damage prior to filing suit. Indeed, Plaintiffs understood that they were compensated for their roof and other exterior damage and yet they did not tell State Farm that interior damage existed and was missed in the two years prior to litigation:

Q. In other words, so that everybody is clear, Mr. Fuentes, not only did you never tell State Farm, but to the best of your recollection you never told anybody at your agent's office haven't been paid enough?

A. I never told them anything.

RR 4:197. Accordingly, the jury could have found that State Farm's breach occurred in 2010, when State Farm first received Plaintiffs' petition alleging interior damages from water intrusion. CR 5, 7. If that was when the breach occurred, then there was evidence that Plaintiffs breached before State Farm because Plaintiffs failed to use State Farm's payment to repair their roof during this period of almost two years (between the time they received the check from State Farm and the time they filed the petition). The jury could have found that this failure violated the policy because it was an unreasonable failure to protect the property from further loss. And the jury could have found that this prejudiced State Farm by making it difficult or impossible to determine whether any interior

damages were caused by Hurricane Ike or occurred at a later time due to Plaintiffs' failure to repair or replace the roof.

**D. The Jury's Findings Are Material to the Verdict**

A trial court may disregard a jury finding if it is immaterial, but there is no basis to reach that conclusion here. A question is immaterial only "when it should not have been submitted," "when it was properly submitted but has been rendered immaterial by other findings," or "when its answer cannot alter the effect of the verdict." *Nat'l City Bank of Ind. v. Ortiz*, 401 S.W.3d 867, 883 (Tex. App.—Houston [14th Dist.] 2013, pet. denied). The jury's answers to verdict questions 1(b) and 2 were plainly material.

First, the questions were properly submitted. As discussed above, there was significant evidence in the record regarding Plaintiffs' duties, their breach of those duties, and the prejudice of their breaches. It was therefore entirely appropriate for the trial court to submit questions 1(b) and 2, which asked the jury to determine whether Plaintiffs were first to materially breach their duties under the insurance policy contract. CR 185-86.

Second, the jury's findings were not rendered immaterial by other findings. Questions 1(b) and (2) generally asked whether Plaintiffs were first to materially breach their duties under the policy. There are no contrary findings that would

render the jury's general answers immaterial. Neither the jury nor the trial court made any such findings.

Finally, the jury's findings plainly have an effect on the verdict. As discussed above, it is well established that when one party to a contract commits a material breach, the other party is excused from further performance. Indeed, that is why the court asked the jury which party breached first. And the jury's finding means that State Farm is entitled to have judgment entered in its favor.

## **II. THE TRIAL COURT ERRED IN EXCLUDING EVIDENCE OF PLAINTIFFS' EXCESSIVE DEMAND**

A party "seeking to reverse a judgment based on evidentiary error need not prove that but for the error a different judgment would necessarily have been rendered, but only that the error probably resulted in an improper judgment." *City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753 (Tex. 1995). Here, the trial court's exclusion of all evidence supporting State Farm's excessive demand defense resulted in an improper judgment because State Farm is entitled to the excessive demand defense as a matter of law. At a minimum, it is probable that the evidence would have resulted in a different judgment.

### **A. The Trial Court Erred in Excluding State Farm's Tendered Evidence**

The excessive demand defense provides that "[a] creditor who makes an excessive demand upon a debtor is not entitled to attorney's fees for subsequent

litigation required to recover the debt.” *Findlay v. Cave*, 611 S.W.2d 57, 58 (Tex. 1981). Similarly, a creditor who makes an excessive demand is not entitled to pre-judgment interest. *Wayne v. A.V.A. Vending, Inc.*, 52 S.W.3d 412, 419 (Tex. App.—Corpus Christi 2001, pet. denied); *Warrior Constructors, Inc. v. Small Business Inv. Co. of Houston*, 536 S.W.2d 382, 386 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ). To prevail on the defense, the debtor must establish that: (1) “the [creditor] acted unreasonably or in bad faith,” and (2) “the creditor refuse[d] a tender of the amount actually due or indicate[d] clearly to the debtor that such tender would be refused.” *Wallace Roofing, Inc. v. Benson*, No. 03-11-00055-CV, 2013 WL 6459757, at \*14 (Tex. App.—Austin Nov. 27, 2013, pet. denied).

The trial court excluded all of State Farm’s proffered evidence regarding excessive demand, and that exclusion had no legal basis. “All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority.” TEX. R. EVID. 402. Relevance is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” TEX. R. EVID. 401. State Farm attempted to submit evidence that would have a tendency to make the existence of the elements of excessive demand “more probable or less probable

than it would be without the evidence.” *Id.* State Farm pled and sought to introduce evidence concerning Plaintiffs’ excessive demand in the form of Plaintiffs’ November 12, 2010 demand letter and the testimony of Charles Levy. CR 74; RR 10; 3:28; 39:9-11. As set forth below, this evidence demonstrates State Farm’s entitlement to the excessive demand defense as a matter of law. At a minimum, the evidence is relevant and admissible, and accordingly the trial court abused its discretion in excluding the evidence.

**B. The Error Resulted in Rendition of an Improper Judgment**

Both elements of the defense were met by the evidence State Farm sought to present.

**1. Plaintiffs’ Demand was Unreasonable**

Demands are excessive when they are unreasonable or in bad faith:

A demand is not excessive, however, simply because it is greater than that which a jury later determines is actually due. Although this may be some evidence of an excessive demand, it is not the only factor to consider, particularly if the amount due is unliquidated. Thus, a claimant is not required to present the exact amount it is entitled to recover at trial. The dispositive question in determining whether a demand is excessive is whether the claimant acted unreasonably or in bad faith.

*Oyster Creek Fin. Corp. v. Richwood Investments II, Inc.*, 176 S.W.3d 307, 318 (Tex. App.—Houston [1st Dist.] 2004, pet. denied). Moreover, the requirement that the demand be “unreasonable” or “in bad faith” is disjunctive. For example, in

Wayne, the court held that a demand that included a claim that had been waived was unreasonable. 52 S.W.3d at 418. As the court explained:

The dispositive inquiry for determining whether a demand is excessive is whether the claimant acted unreasonably or in bad faith. *Without addressing bad faith*, we conclude appellant's demand upon appellee was unreasonable. Even though provided for in the contract, demanding double holdover rent when that clause had been manifestly waived for over four years, is unreasonable. Additionally, in appellant's second demand letter, appellant requested common area charges over the entire holdover period. The record indicates that appellee had already paid these common area charges over the course of its tenancy. *If a claimant demands monies to which he is not entitled, that demand is unreasonable and consequently excessive.*

*Id.* (citations omitted) (emphasis added).

Here, the evidence shows that Plaintiffs made a demand that was both unreasonable and made in bad faith as a matter of law (or, at a minimum, that it is probable that the jury would have made such a finding if presented with the evidence).

To begin with, the demand for damages went well beyond any reasonable number. The November 12, 2010 letter stated that Plaintiffs demanded "\$230,000.00 in economic damages, which you should note may increase as the damages have yet to be fully repaired." RR 39:10. This amount was unreasonable on its face as it exceeded the sum of Plaintiffs' policy limits by approximately \$100,000. RR 19:11. *See Aero DFW, LP v. Swanson*, No. 2-06-179-CV, 2007 WL 704911, at \*4 (Tex. App.—Fort Worth Mar. 8, 2007, no pet.) ("[A]ppellant

demanded payment for amounts to which it was not entitled and which were, therefore, unreasonable”). Moreover, at trial, Plaintiffs only submitted evidence of \$61,761.75 of damages, which included unrepaired damages to Plaintiffs’ roof, shed, and fence that State Farm had already covered for \$7,856.75, less deductible and depreciation. RR 6:16-20, 22; 21:26-38, 65. Plaintiffs’ demand is thus excessive, not simply because the jury awarded approximately 8% of that amount, but because Plaintiffs had no reasonable basis to request anywhere near that amount of damages.

In addition, the amount of the demand for fees and expenses was egregious and completely unsupported. The November 12, 2010 demand letter stated Plaintiffs demanded “\$112,000.00 for expenses, including attorney’s fees, which you should note will increase as we prepare this case for trial.” RR 39:10. Yet, at trial, Plaintiffs only submitted evidence of \$240 of attorney’s fees through the date of the letter, of which the largest expenditure was drafting the excessive demand and faxing the letter itself. RR 18:40. Accordingly, Plaintiffs had no reasonable basis for requesting approximately *450 times* that amount in expenses. Such a disparity cannot reasonably be attributed to an incorrect estimate of an attorneys’ hourly rate or the amount of time spent on the case; rather, it is simply an unreasonable and bad faith request of expenses not actually due.



## 2. Tender Would Have Been Futile

In analyzing the second element, tender, “[i]t is irrelevant that . . . a debtor . . . did not tender to appellee the proper amount due, for the rule is that tender is . . . excused where the creditor has clearly indicated that he is unwilling to accept what is due in discharge of the debt.” *Warrior Constructors, Inc.*, 536 S.W.2d at 386. For example, a “demand letter that states that the full demand amount must be tendered indicates a refusal to accept tender of a lesser amount.” *McAlister v. Hatbreeze Properties, L.L.C.*, No. 02-11-00060-CV, 2012 WL 579436, at \*8 (Tex. App.—Fort Worth Feb. 23, 2012, no pet.).

Here, Plaintiffs’ demand letter indicated a clear intent to refuse the amount actually due.

First, because the expenses demanded were so egregiously excessive, a tender of the amount actually due would have been viewed as essentially no tender at all. Common sense dictates that Plaintiffs did not ask for \$112,000 within 60 days if they were willing to accept \$240. Further, because the expenses demanded were so unrealistic for a case that had just been initiated, it provided State Farm with no guidance as to a reasonable tender. State Farm had no obligation to guess as to the correct amount of damages when faced with a request for \$112,000 in attorney’s fees at the start of the case. *See Kriegel v. Scott*, 439 S.W.2d 445, 448

(Tex. Civ. App.—Houston [14th Dist.] 1969, writ denied) (A debtor “could hardly tender payment of a sum whose total cannot be determined.”).

Second, the letter itself indicated that tender of the amount actually due would be refused. The letter stated “demand is hereby made that within sixty (60) days. . . the following amounts *be paid*.” RR 39:10 (emphasis added). Further, the letter stated that it was “a tremendous savings” and should be viewed as a “good faith and conservative effort” to resolve the litigation. *Id.* Finally, the letter stated:

If our clients’ claim is not paid within sixty (60) days from the receipt of this correspondence, we would expect to recover their actual damages, along with damages for mental anguish, prejudgment interest and attorney’s fees for breach of the duty of good faith and fair dealing you owe to Mr. and Mrs. Fuentes. In addition, please be aware that recovery in the form of treble damages and additional penalties will also be sought.

*Id.* These statements thus clearly indicated that Plaintiffs would not have accepted the amount actually due, which was hundreds of thousands of dollars less than the amount requested.

Indeed, to the extent that Plaintiffs would have tried to rebut this evidence by arguing that they would have accepted a lesser offer, there is no reasonable probability that it would have been successful. The reason is that State Farm did make an offer under Rule 167 (in the amount of \$70,000), which Plaintiffs rejected. RR 3:28. State Farm chose not to introduce this Rule 167 offer as part of its affirmative case, but the offer could still have been introduced as rebuttal

evidence, and it would have plainly overcome any effort by Plaintiffs to show that they would have accepted a reasonable offer.

On the facts set forth above, the trial court should have concluded as a matter of law that Plaintiffs' demand was excessive and granted State Farm's motion for a remittitur. At the very least, State Farm was entitled to present evidence of this defense to the jury. It was error for the Court to have excluded it in the first place and it was error for the Court to deny State Farm's motion for a new trial so that a jury could consider its excessive demand defense.

## **PRAYER**

For the foregoing reasons, the trial court's judgment in favor of Plaintiffs should be reversed or vacated and judgment entered in favor of State Farm. Alternatively, judgment should be vacated and a new trial ordered unless Plaintiffs remit attorneys' fees and prejudgment interest.

Dated: March 25, 2015

/s/ David V. Jones

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## **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of TEX. R. APP. P. 9.4(i)(2)(B) because this brief contains 6,911 words, excluding the parts of the brief exempted by TEX. R. APP. P. 9.4(i)(1).

This brief complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 software in Times New Roman 14 point font in text and Times New Roman 12 point font in footnotes.

DATED: March 25, 2015

/s/ Katherine Armstrong  
Katherine Armstrong

## **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above Appellant's Brief has been served on the following individual(s) by the method(s) indicated, on this, the 25th day of March 2015, as follows:

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# Tab A

Charge of the Court  
(CR 183-207)

P-25

CAUSE NO. 2010-61039

CANDELARIO FUENTES AND § IN THE DISTRICT COURT OF  
MARIA FUENTES, §  
§  
v. § HARRIS COUNTY, TEXAS  
§  
STATE FARM LLOYDS, ET. AL. § 152<sup>ND</sup> JUDICIAL DISTRICT

CHARGE OF THE COURT

**FILED**

Chris Daniel  
District Clerk

AUG - 1 2013

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, ~~answer~~ the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider nor discuss any evidence that was not admitted in courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.



5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when it is proved by witnesses who saw the act done or heard the words spoken, or it is proved by documentary evidence. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 11 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

### QUESTION 1

Did either of those listed below fail to comply with the insurance policy?

A failure to comply must be material. In order for Candelario Fuentes' and Maria Fuentes' failure to comply with their duties after loss to be material, State Farm must have been prejudiced by Candelario Fuentes' and Maria Fuentes' failure to comply. State Farm was prejudiced only if its rights and/or obligations under the policy were detrimentally affected by Candelario Fuentes' and Maria Fuentes' failure to comply, if any.

Answer "Yes" or "No."

a. State Farm:

Answer: Yes

b. Candelario Fuentes and Maria Fuentes:

Answer: Yes

If you answered "Yes" to Question 1a and 1b, then answer the following question.  
Otherwise, do not answer the following question.

QUESTION 2

Who failed to comply with the insurance policy first?

Answer "Candelario Fuentes and Maria Fuentes" or "State Farm:"

Answer: Candelario Fuentes  
and Maria Fuentes

If you answered "Yes" to Question 1a, then answer the following question. Otherwise, do not answer the following question.

### QUESTION 3

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Candelario and Maria Fuentes for their damages, if any, that resulted from the failure to comply you found in response to Question 1.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other:

The difference, if any, between the amount paid by State Farm to Candelario and Maria Fuentes for their Hurricane Ike damages and the amount that should have been paid by State Farm to Candelario and Maria Fuentes under the policy.

Answer in dollars and cents for damages, if any.

Answer: \$ 18,818.00

#### QUESTION 4

Did State Farm engage in any unfair or deceptive act or practice that caused damages Candelario and Maria Fuentes?

Answer "Yes" or "No" as to each subpart.

"Unfair or deceptive act or practice" means any one or more of the following:

- a. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the liability under the insurance policy issued to Candelario and Maria Fuentes had become reasonably clear; or

Answer: No

- b. Failing to promptly provide to Candelario and Maria Fuentes a reasonable explanation of the factual and legal basis in the policy for the denial of a claim(s); or

Answer: Yes

- c. Failing to affirm or deny coverage within a reasonable time; or

Answer: No

- d. Refusing to pay a claim without conducting a reasonable investigation with respect to a claim(s); or

Answer: Yes

- e. Misrepresenting to Candelario and Maria Fuentes a material fact or policy provision relating to the coverage at issue.

Answer: Yes

If you answered "Yes" to any part of Question 4, then answer the following question. Otherwise, do not answer the following question.

#### QUESTION 5

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Candelario and Maria Fuentes for their damages, if any, that resulted from the failure to comply you found in response that were caused by an unfair or deceptive act that you found in response to Question number 3.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other. You shall not award any sum of money on any element if you have otherwise, under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any.

Answer in dollars and cents for damages, if any.

- a. The reasonable and necessary cost to repair property damaged by Hurricane Ike less any amount previously paid by State Farm to repair the same damage.

Answer: \$ 18,818.00

- b. Mental anguish sustained by Candelario Fuentes in the past?

Answer: \$ 8,750.00

- c. Mental anguish sustained by Maria Fuentes in the past?

Answer: \$ 8,750.00

- d. Mental anguish that, in reasonable probability, Candelario Fuentes will sustain in the future.

Answer: \$ 4,750.00

- e. Mental anguish that, in reasonable probability, Maria Fuentes will sustain in the future.

Answer: \$ 4,750.00

QUESTION 6

Did Candelario Fuentes and Maria Fuentes provide written notice of claim to State Farm?

“Notice of Claim” means any written notification provided by a claimant to an insurer that reasonably appraises the insurer of the facts relating to the claim.

Answer “Yes” or “No.”

Answer: Yes

If you answered "Yes" to Question 6, then answer the following question. Otherwise, do not answer the following question.

QUESTION 7

On what date did Candelario Fuentes and Maria Fuentes provide written notice of claim to State Farm?

Answer: 9-22-2008



QUESTION 8

Did Candelario Fuentes and Maria Fuentes provide all items, statements, and forms reasonably requested and required by State Farm as to their claim relating to Hurricane Ike?

Answer "Yes" or "No."

Answer: Yes

If you answered "Yes" to Question 8, then answer the following question. Otherwise, do not answer the following question.

QUESTION 9

On what date did Candelario Fuentes and Maria Fuentes provide all items, statements, and forms reasonably requested and required by State Farm as to their claim relating to Hurricane Ike?

Answer: 11-12-2008

QUESTION 10

Did State Farm waive its right to written notice of a claim from Candelario Fuentes and Maria Fuentes?

Waiver is an intentional surrender of a known right or intentional conduct inconsistently with claiming the right.

Answer "Yes" or "No."

Answer: yes

If you answered "Yes" to any subpart of Question 4, then answer the following question as to the corresponding subpart. Otherwise, do not answer the following question.

#### QUESTION 11

Did State Farm engage in any such conduct knowingly?

"Knowingly" means actual awareness of the falsity, unfairness or deceptiveness of the act or practice on which a claim for damages is based. Actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

Answer "Yes" or "No" as to each subpart.

- a. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the liability under the insurance policy issued to Candelario and Maria Fuentes had become reasonably clear; or

Answer: No

- b. Failing to promptly provide to Candelario and Maria Fuentes a reasonable explanation of the factual and legal basis in the policy for the denial of a claim(s); or

Answer: No

- c. Failing to affirm or deny coverage within a reasonable time; or

Answer: No

- d. Refusing to pay a claim without conducting a reasonable investigation with respect to a claim(s); or

Answer: Yes

- e. Misrepresenting to Candelario and Maria Fuentes a material fact or policy provision relating to the coverage at issue.

Answer: No

If you have answered "Yes" to Question 11, then answer the following question. Otherwise, do not answer the following question.

QUESTION 12

What sum of money, if any, in addition to actual damages, should be awarded to Candelario and Maria Fuentes against State Farm because State Farm's conduct was committed knowingly?

Answer in dollars and cents for damages, if any:

Answer: \$ 7,527.00

QUESTION 13

Did State Farm fail to comply with its duty of good faith and fair dealing to Candelario and Maria Fuentes?

An insurer fails to comply with its duty of good faith and fair dealing by:

- a. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when State Farm's liability has become reasonable clear; or
- b. Refusing to pay a claim without conducting a reasonable investigation of the claim.

Answer "Yes" or "No."

Answer: Yes

If you answered "Yes" to Question 13, then answer the following question. Otherwise, do not answer the following question.

#### QUESTION 14

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Candelario and Maria Fuentes for their damages, if any, that were proximately caused by State Farm's failure to comply with its duty of good faith and fair dealing?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other. You shall not award any sum of money on any element if you have otherwise, under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any.

Answer in dollars and cents for damages, if any.

- a. The reasonable and necessary cost to repair property damaged by Hurricane Ike less any amount previously paid by State Farm to repair the same damage.

Answer: \$ 18,818.00

- b. Mental anguish sustained by Candelario Fuentes in the past?

Answer: \$ 8,760.00

- c. Mental anguish sustained by Maria Fuentes in the past?

Answer: \$ 8,750.00

- d. Mental anguish that, in reasonable probability, Candelario Fuentes will sustain in the future.

Answer: \$ 4,750.00

- e. Mental anguish that, in reasonable probability, Maria Fuentes will sustain in the future.

Answer: \$ 4,750.00



### QUESTION 15

Did State Farm commit fraud against Candelario and Maria Fuentes?

Fraud occurs when—

- a. party makes a material misrepresentation, and
- b. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
- c. the misrepresentation is made with the intention that it should be acted on by the other party, and
- d. the other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means:

- a. a false statement of fact, or
- b. a promise of future performance made with an intent, at the time the promise was made, not to perform as promised, or
- c. a statement of opinion based on a false statement of fact, or
- d. a statement of opinion that the maker knows to be false, or
- e. an expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

“Special knowledge” means knowledge or information superior to that possessed by the other party and to which the other party did not have equal access.

Answer “Yes” or “No.”

Answer: Yes

If you answered "Yes" to Question 15, then answer the following question. Otherwise, do not answer the following question.

#### QUESTION 16

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Candelario and Maria Fuentes for their damages, if any, that resulted from State Farm's fraud?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other. You shall not award any sum of money on any element if you have otherwise, under some other element awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any.

Answer in dollars and cents for damages, if any.

- a. The reasonable and necessary cost to repair property damaged by Hurricane Ike less any amount previously paid by State Farm to repair the same damage.

Answer: \$ 18,818.00

- b. Mental anguish sustained by Candelario Fuentes in the past?

Answer: \$ 8,750.00

- c. Mental anguish sustained by Maria Fuentes in the past?

Answer: \$ 8,750.00

- d. Mental anguish that, in reasonable probability, Candelario Fuentes will sustain in the future.

Answer: \$ 4,750.00

- e. Mental anguish that, in reasonable probability, Maria Fuentes will sustain in the future.

Answer: \$ 4,750.00

Answer the following question only if you unanimously answered "Yes" to Questions 13 or 15. Otherwise, do not answer the following question.

To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

#### QUESTION 17

Do you find by clear and convincing evidence that the harm to Candelario and Maria Fuentes resulted from fraud by State Farm?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

Fraud occurs when—

- a. party makes a material misrepresentation, and
- b. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
- c. the misrepresentation is made with the intention that it should be acted on by the other party, and
- d. the other party relies on the misrepresentation and thereby suffers injury.

"Misrepresentation" means:

- a. a false statement of fact, or
- b. a promise of future performance made with an intent, at the time the promise was made, not to perform as promised, or
- c. a statement of opinion based on a false statement of fact, or
- d. a statement of opinion that the maker knows to be false, or
- e. an expression of opinion that is false, made by one who has, or purports to have, special knowledge of the subject matter of the opinion.

"Special knowledge" means knowledge or information superior to that possessed by the other party and to which the other party did not have equal access.

Answer "Yes" or "No."

Answer: \_\_\_\_\_

Answer the following question only if you unanimously answered "Yes" to Question 17. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

#### QUESTION 18

What sum of money, if any, if now paid in cash, should be assessed against State Farm and awarded to Candelario and Maria Fuentes as exemplary damages, if any, for the conduct you found in response to Question 13?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are:

- a. The nature of the wrong;
- b. The character of the conduct involved;
- c. The degree of culpability of State Farm;
- d. The situation and sensibilities of the parties;
- e. The extent to which the conduct in question ~~offends~~<sup>offends</sup> a public sense of justice and propriety; and
- f. The net worth of State Farm

Answer in dollars and cents, if any:

Answer: \$ \_\_\_\_\_

If you answered "Yes" to Question 1a or any part of Question 4, then answer the following question. Otherwise, do not answer the following question.

#### QUESTION 19

What is a reasonable fee for the necessary services of Candelario and Maria Fuentes' attorneys in this case, stated in dollars and cents?

Factors to consider in determining a reasonable fee include—

- a. The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly.
- b. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
- c. The fee customarily charged in the locality for similar legal services.
- d. The amount involved and the results obtained.
- e. The time limitations imposed by the client or by the circumstances.
- f. The nature and length of the professional relationship with the client.
- g. The experience, reputation, and ability of the lawyer or lawyers performing the services.
- h. Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

- a. For all representation in the trial court through the trial?

Answer: \$ 254,545.00

- b. For representation through appeal to the court of appeals?

Answer: \$ 25,000.00

- c. For representation at the petition for review stage in the Supreme Court of Texas?

Answer: \$ 7,500.00

- d. For representation at the merits briefing stage in the Supreme Court of Texas?

Answer: \$ 10,000.00

- e. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas?

Answer: \$ 7,500.00

Presiding Juror:

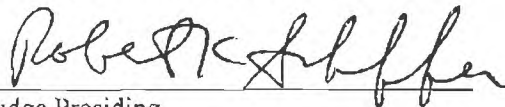
1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
  - a. have the complete charge read aloud if it will be helpful to your deliberations;
  - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
  - c. give written questions or comments to the bailiff who will give them to the judge;
  - d. write down the answers you agree on;
  - e. get the signatures for the verdict certificate; and
  - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you cannot have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict. If all 11 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 11 of you agreeing on some answers, while only 10 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.
4. There are some special instructions before Questions 13, 15, 17 and 18 explaining how to answer those questions. Please follow the instructions. If all 11 of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

  
Judge Presiding

Verdict Certificate

Check one:

\_\_\_\_ Our verdict is unanimous. All 11 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 11 of us.

\_\_\_\_ Signature of Presiding Juror

\_\_\_\_ Printed Name of Presiding Juror

✓ \_\_\_\_ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

1. Jennifer Smith
2. Alejandra Salinas
3. Miguel A. Barragan
4. Mehenash Nassar
5. Tasha Kuapahi-Liebespeck
6. SAIDA EBRAHIM
7. Calvin Nguyen
8. Alieha Verrellion
9. Megika Thompson
10. SAMUEL M. AYDUB

1. Jennifer Smith
2. Alejandra Salinas
3. Miguel A. Barragan
4. Mehenash Nassar
5. Tasha Kuapahi-Liebespeck
6. SAIDA EBRAHIM
7. Calvin Nguyen
8. Alieha Verrellion
9. Megika Thompson
10. SAMUEL M. AYDUB

If you have answered Questions 13, 15, 17 and/or 18, then you must sign this certificate also.

#### Additional Certificate

I certify that the jury was unanimous in answering the following questions. All 11 of us agreed to each of the answers. The presiding juror has signed the certificate for all 11 of us.

##### Question 13

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror

##### Question 15

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror

##### Question 17

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror

##### Question 18

\_\_\_\_\_  
Signature of Presiding Juror

\_\_\_\_\_  
Printed Name of Presiding Juror



# Tab B

Final Judgment  
(CR 432-436)



number 2. The Court renders judgment in favor of Plaintiffs Candelario Fuentes and Maria Fuentes and against STATE FARM based upon the jury's answers to question numbers 1(a), 3, 4(b), 4(d), 4(e), 5(a), 5(b), 5(c), 5(d), 5(e), 6, 7, 8, 9, 10, 11(d), 12, 13, 14(a)-(e), 15, 16(a)-(c), and 19(a)-(e).

The past damages of Plaintiffs Candelario Fuentes and Maria Fuentes are \$36,318. Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to prejudgment interest on these past damages, beginning on September 17, 2010, and ending on the day before the judgment is signed. The prejudgment interest rate is 5% per year, simple interest. Through September 6, 2013, prejudgment interest amounts to \$5,467.88. Prejudgment interest will accrue at the rate of \$5.04 per day from September 6, 2013 until the day before the judgment is signed.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to additional interest on their economic damages, beginning on January 11, 2009, and ending on the day the judgment is signed. The additional interest rate is 18% per year, simple interest. Through September 6, 2013, additional interest amounts to \$15,985.89. Additional interest will accrue at the rate of \$9.40 per day from September 6, 2013 until the day the judgment is signed.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to future mental anguish in the amount of \$9,500.00.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to additional damages in the amount of \$7,527.00 because STATE FARM knowingly engaged in acts and practices defined in Subchapter B, Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined, actionable under Subchapter D, Private Action.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover from STATE FARM the reasonable fees for the necessary services of their attorneys in this case for

representation in the trial court in the amount of \$254,545.00.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover the reasonable fees for the necessary services of their attorneys for representation through appeal to the court of appeals in the amount of \$25,000.00 in the event that Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any appeal of this final judgment.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover the reasonable fees for the necessary services of their attorneys for representation at the petition for review stage in the Supreme Court of Texas in the amount of \$7,500.00; and for representation through oral argument and the completion of proceedings in the Supreme Court of Texas in the amount of \$17,500.00.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover from STATE FARM all taxable court costs, which as of August 20, 2013 total \$43,556.41.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover from STATE FARM post-judgment interest on past damages, additional damages, attorneys' fees through and including trial, prejudgment interest, additional interest, and court costs awarded in this judgment at the legal rate of 5% per year, compounded annually, beginning on the day this judgment is signed, until the judgment is paid.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

(1) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from STATE FARM the sum of ~~\$272,899.89~~ <sup>\$329,343.77</sup> inclusive of past damages, additional damages, prejudgment interest, additional interest, attorneys' fees for representation in the trial court, and taxable court costs, for which let execution issue;

(2) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from STATE FARM post-judgment interest at the rate of 5% per year, compounded annually, on the amount of ~~\$272,899.88~~ <sup>\$329,343.77</sup> beginning on the date this judgment is signed, until that amount is paid;

(3) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from STATE FARM the sum of \$25,000.00 in the event Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any party's appeal of this final judgment;

(4) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from STATE FARM the sum of \$7,500.00 in the event a petition for review is filed in the Supreme Court of Texas and Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any party's appeal of this final judgment;

(5) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from STATE FARM the sum of \$10,000.00 in the event briefs on the merits are filed in the Supreme Court of Texas and Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any party's appeal of this final judgment; and

(6) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from STATE FARM the sum of \$7,500.00 for oral argument and the completion of proceeding in the Supreme Court of Texas in the event Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any party's appeal of this final judgment.

(7) Plaintiffs Candelario Fuentes and Maria Fuentes shall have & recover from State Farm all taxable court costs.

All relief not herein expressly granted is denied. This Final Judgment disposes of all claims between all parties and is a final, appealable judgment.

Signed this 15<sup>th</sup> day of September, 2013.

Robert K. Shaffer  
Presiding Judge

# Tab C

Order  
(CR 437)

P-1  
EJUDY

CAUSE NO. 2010-61039

CANDELARIO FUENTES AND  
MARIA FUENTES

v.

STATE FARM LLOYD

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

152<sup>nd</sup> JUDICIAL DISTRICT

**FILED**

Chris Daniel

District Clerk

SEP 16 2014

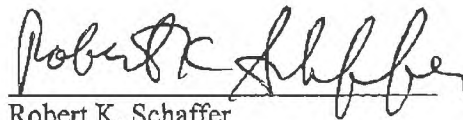
ORDER

Time: \_\_\_\_\_  
Harris County, Texas

By: \_\_\_\_\_  
Deputy Clerk

On this date the court considered Defendant State Farm Lloyds' Motion to enter Judgment and this court, after considering the pleadings and arguments of counsel, finds that the motion should be denied.

Signed September 15, 2014.



Robert K. Schaffer  
Presiding Judge



# Tab D

Amended Final Judgment  
(CR 588-593)

P-6  
MODIX

10/14/2014 4:35:30 PM  
Chris Daniel - District Clerk  
Harris County  
Envelope No: 2825921  
By: SMITH, SALENE

CAUSE NO. 2010-61039

CANDELARIO FUENTES	§	IN THE DISTRICT COURT OF
AND MARIA FUENTES,	§	
Plaintiffs,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
STATE FARM LLOYDS, STATE FARM	§	
GENERAL INSURANCE COMPANY,	§	
AND STATE FARM FIRE AND	§	
CASUALTY COMPANY,	§	
Defendants.	§	152 <sup>ND</sup> JUDICIAL DISTRICT

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AMENDED FINAL JUDGMENT

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On the 15th day of July 2013, came on to be heard the above-entitled and numbered cause. Plaintiffs Candelario Fuentes and Maria Fuentes, appeared in person, and by and through their counsel, and announced ready for trial. Defendant State Farm Lloyds ("State Farm") appeared in person, and by and through its counsel, and announced ready for trial. The plaintiffs nonsuited their claims against State Farm General Insurance Company and State Farm Fire and Casualty, and the case proceeded to trial on the Plaintiffs' remaining claims against State Farm. This court has jurisdiction over the parties and subject matter of this cause.

A jury consisting of 11 good and qualified jurors was selected and sworn. At the close of the evidence, the Court submitted its charge to the jury. The jury retired to deliberate, and after deliberating, announced in open court that it had reached a verdict on August 1, 2013. The court received and filed the jury's verdict and discharged the jury.

The Court now disregards the jury's answers to question number 1(b) and question number 2. The Court renders judgment in favor of Plaintiffs Candelario Fuentes and Maria Fuentes and against State Farm based upon the jury's answers to questions number 1(a), 3, 4(b), 4(d), 4(e), 5(a), 5(b), 5(c), 5(d), 5(e), 6, 7, 8, 9, 10, 11(d), 12, 13, 14(a)-(e), 15, 16(a)-(e), and 19(a)-(e).

The past damages of Plaintiffs Candelario Fuentes and Maria Fuentes are \$36,318.00. Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to prejudgment interest on these past damages, beginning on September 17, 2010, and ending on the day before the amended final judgment is signed. The prejudgment interest rate is 5% per year, simple interest. Through September 14, 2014, prejudgment interest amounts to \$7,347.80. Prejudgment interest will accrue at the rate of \$5.04 per day from September 15, 2014 until the day before the amended final judgment is signed.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to additional interest on their economic damages totaling \$18,818.00, beginning on January 11, 2009, and ending on the day the amended final judgment is signed. The additional interest rate is 18% per year, simple interest. Through September 15, 2014, additional interest amounts to \$19,501.49. Additional interest will accrue at the rate of \$9.40 per day from September 16, 2014 until the day the amended final judgment is signed.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to future mental anguish damages in the amount of \$9,500.00.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to additional damages in the amount of \$7,527.00 because State Farm knowingly engaged in acts and practices defined in Subchapter B, Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined, actionable under Subchapter D, Private Action.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover from State Farm the reasonable fees for the necessary services of their attorneys in this case for representation in the trial court in the amount of \$254,545.00.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover the reasonable fees for the necessary services of their attorneys for representation through appeal to the court of appeals in the amount of \$25,000.00 in the event that Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any appeal of this amended final judgment.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover the reasonable fees for the necessary services of their attorneys for representation at the petition for review stage in the Supreme Court of Texas in the amount of \$7,500.00; and for representation through oral argument and the completion of proceedings in the Supreme Court of Texas in the amount of \$17,500.00.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover from State Farm all taxable court costs.

Plaintiffs Candelario Fuentes and Maria Fuentes are entitled to recover from State Farm post-judgment interest on past damages, additional damages, attorneys' fees through and including trial, prejudgment interest, additional interest, and court costs awarded in this judgment at the legal rate of 5% per year, compounded annually, beginning on the day this judgment is signed, until the amended final judgment is paid.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

(1) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm the sum of \$334,739.29 inclusive of past damages, additional damages, prejudgment interest through September 14, 2014, additional interest through September 15, 2014, and attorneys' fees for representation in the trial court.

(2) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm prejudgment interest at the rate of \$5.04 per day beginning on September 15, 2014 and ending on the day before this amended final judgment is signed.

(3) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm additional interest at the rate of \$9.40 per day beginning on September 16, 2014 and ending on the day this amended final judgment is signed.

(4) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm the sum of \$25,000.00 in the event Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any party's appeal of this amended final judgment;

(5) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm the sum of \$7,500.00 in the event a petition for review is filed in the Supreme Court of Texas and Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any party's appeal of this amended final judgment; and

(6) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm the sum of \$10,000.00 in the event briefs on the merits are filed in the Supreme Court of Texas and Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any party's appeal of this amended final judgment.

(7) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm the sum of \$7,500.00 for oral argument and the completion of proceeding in the Supreme Court of Texas in the event Plaintiffs Candelario Fuentes and Maria Fuentes are successful in any party's appeal of this amended final judgment.

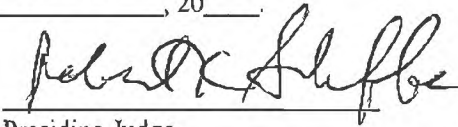
(8) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm all taxable court costs.

(9) Plaintiffs Candelario Fuentes and Maria Fuentes shall have and recover of and from State Farm post-judgment interest at the rate of 5% per year, compounded annually, on the amounts awarded in this judgment beginning on the date this amended final judgment is signed, until those amounts are paid.

All relief not herein expressly granted is denied. This Amended Final Judgment disposes of all claims between all parties and is a final, appealable judgment, for which execution may issue.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NOV 07 2014

  
Presiding Judge

# Tab E

Bill of Exception  
(RR 10:4-11)



BILL OF EXCEPTION - MR. CHARLES L. LEVY  
JULY 29, 2013

1 THE COURT: Everybody have a seat please.

2 Mr. Jones, you may proceed.

3 MR. JONES: Yes, sir, your Honor. May we have a copy of  
4 Defendant's Exhibit No. 72. Your Honor, this Exhibit 72 will be for  
5 the Court only for purposes of this proceeding.

6 THE COURT: Okay.

7 MR. JONES: May I approach the witness?

8 THE COURT: You may.

9 MR. JONES: Thank you. Pardon me.

10 MR. CHARLES L. LEVY,

11 Having been previously duly sworn, further testified as follows:

12 DIRECT EXAMINATION

13 BY MR. JONES:

14 Q. Mr. Levy, I'll hand you a copy of what has been marked as  
15 Defendant's Exhibit No. 72 and ask you to take a moment to look  
16 at that.

17 Have you seen this document before, Mr. Levy?

18 A. Yes, sir.

19 Q. Mr. Levy, are you aware of doctrine in Texas known as the  
20 Doctrine of Excessive Demand?

21 A. Yes.

22 Q. Can you provide the Court with an explanation of what the  
23 Doctrine of Excessive Demand is?

24 A. Yes, sir. Excessive Demand Doctrine provides that if there is  
25 a demand that is unreasonable or made in bad faith that

CYNTHIA MARTINEZ MONTALVO, CSR  
152ND DISTRICT COURT  
713-368-6037  
cynthiam@justex.net

MR. LEVY - JULY 29, 2013  
Direct Examination by MR. JONES

1           thereafter the parties seeking attorney's fees would not be  
2           entitled to attorney's fees based on the excessive demand.

3       Q.   And is there any requirement, Mr. Levy, that the demand made by  
4           Plaintiffs be either unreasonable or made in bad faith?

5       A.   Basically that is the doctrine. It is that a demand that is  
6           made is unreasonable or made in bad faith.

7       Q.   Would you look at page 2 of Exhibit 72, please. Can you tell  
8           the Court, Mr. Levy, what was the demand made by the Mostyn Law  
9           Firm on the date of the Exhibit 72.

10      A.   The three numbers summed together was just under \$400,000 which  
11          included 112,000 for expenses including attorney's fees.

12      Q.   Would you identify the date of Exhibit 2 for the -- 72 for the  
13          Court please.

14      A.   Says November 12th, 2010.

15      Q.   Do you believe, Mr. Levy, that demand of approximately four  
16          hundred and some thousand dollars was an excessive demand based  
17          on the doctrine as you have described it?

18      A.   It it is below 400 just a tad. I do believe it is excessive  
19          demand.

20      Q.   Okay. Why do you believe that that was an excessive demand?

21      A.   For several reasons. If you focus on the 230,000 aspect of it,  
22          the policy limits is approximately \$71,000, which means that if  
23          the house was completely blown away in a tornado or burned down  
24          in a fire that would have been the amount that the insured  
25          would have been entitled to collect for the dwelling itself.

CYNTHIA MARTINEZ MONTALVO, CSR  
152ND DISTRICT COURT  
713-368-6037  
cynthiam@justex.net

MR. LEVY - JULY 29, 2013  
Direct Examination by MR. JONES

1           As concerns the attorney's fees piece, the \$112,000  
2           as of November 12th, 2010, the exhibit that was originally  
3           provided to me as part of Mr. Cashiola's file summed to  
4           somewhere around \$500 or so. Perhaps 500- to \$600 when you add  
5           up the numbers for attorney's fees as of the date of  
6           November 12th, 2010. And then I believe that Exhibit 99 sums  
7           you to somewhere around 200 to \$300, which is the adjusted  
8           amount that Mr. Cashiola testified to. 200 to \$300 on or  
9           around November 12th -- or as of November 12th -- I should  
10          say -- 2010.

11       Q.   I will ask you to assume, Mr. Levy, that Exhibit 99 will  
12           reflect that on November 12th of 2010 the amount of total  
13           attorney's fees that had been incurred for the Fuentes' law  
14           suit reflected in this document was \$240.

15                   Will you assume that with me, sir?

16       A.   That would be with my 2- to 300 range.

17       Q.   Do you have an opinion, Mr. Levy, whether State Farm made a  
18           response to this demand?

19       A.   I do.

20       Q.   And what is your opinion?

21       A.   The response is that they kept defending the lawsuit.

22       Q.   Do you have an opinion based on the exhibit, your knowledge,  
23           your background, your skill and expertise on what a reasonable  
24           attorney's fees would have been in this case?

25       A.   As of November the 12th -- let me get the correct date.

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152ND DISTRICT COURT  
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MR. LEVY - JULY 29, 2013  
Direct Examination by MR. JONES

1 November the 12th, 2010 using the information provided by their  
2 expert Mr. Cashiola, the original documents that was provided  
3 as part of his file, as I said was between 5- and \$600. The  
4 revised document was 2- to \$300. You said 240 for my  
5 assumption. So, I would say that certainly no more than that  
6 \$600 as of November 12th, 2010 based on their information.

7 Q. And that \$600 that you opined to is that based on the factors  
8 you just described to the Court; is that correct?

9 A. Well, the other thing is section 541-157 of the Insurance Code  
10 as concerned attorney's fees provides that the demand would  
11 include an amount of money to compensate the claimant for the  
12 claimant's reasonable and necessary attorney's fees incurred as  
13 of the date of the offer.

14 And, so, the 112,000 becomes that much more  
15 unreasonable based on their own information.

16 Q. Thank you, Mr. Levy.

17 MR. JONES: I will pass the witness, your Honor.

18 THE COURT: Do you have any questions, Mr. Toups?

19 MR. TOUPS: I have a couple questions.

20 CROSS-EXAMINATION

21 BY MR. TOUPS:

22 Q. You were here I think, Mr. Levy, during the testimony of Mr.  
23 Cashiola; were you not?

24 A. Yes, sir.

25 Q. And you heard that he testified that the total attorney's fees

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152ND DISTRICT COURT  
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MR. CHARLES L. LEVY - JULY 29, 2013  
Cross-Examination by MR. TOUPS

1 at least from the spreadsheet in Plaintiffs' Exhibit No. 99 was  
2 \$282,000 and some change which ended a week before trial  
3 started; do you recall that testimony?

4 A. In a general sense, yes.

5 Q. Okay. I am not asking you whether or not you think that is  
6 reasonable right now; but with that being his testimony, that  
7 number is almost three times what -- the 112 that is in that  
8 letter? Just looking at the math, two and a half, right?

9 A. Okay.

10 Q. All right. Is it?

11 A. I mean, 280 would be about 2.6 or 2.5 times.

12 Q. All right. And you also heard the testimony of that State Farm  
13 has provided information to the Mostyn Law Firm that the Mostyn  
14 Law Firm has been paid by State Farm on a number of -- or all  
15 of their hurricane cases with the Mostyn Firm almost three  
16 times what any other law firm has been paid? Did you hear that  
17 testimony?

18 MR. JONES: Your Honor, I am sorry. I certainly need to  
19 object to that for purposes of the record as I have done previously.

20 THE COURT: Overruled.

21 A. I heard some testimony to the effect of the two to three times.

22 Q. (MR. TOUPS) Okay. Now, the first --

23 MR. TOUPS: Can you put that back up, the Exhibit 72? Next  
24 page, Dennis, if you don't mind. Thank you.

25 Q. (MR. TOUPS) Now, the first number in the demand is 230,000.

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MR. CHARLES L. LEVY - JULY 29, 2013  
Cross-Examination by MR. TOUPS

1 Were you here when Mr. Guiter testified?

2 A. I don't believe so.

3 Q. Okay. Well, assume with me that what his testimony was when he  
4 grouped up all the numbers on the big board over there that Mr.  
5 Jones was asking you about it comes up to about \$61,000 and  
6 some change. Make that assumption with me. Not asking if you  
7 agree or disagree should it be 61, but just make that  
8 assumption. Okay, sir?

9 A. Okay.

10 Q. Now, under Texas Law if the jury finds a knowing agent and/or  
11 if the jury finds that there was some Deceptive Trade Practices  
12 they committed against the Fuentes the jury could award up to  
13 three times that amount in punitive damages, couldn't they?

14 A. I don't think so.

15 Q. I'm not asking you if you think so. Is that what the law  
16 provides?

17 A. I don't think.

18 Q. You don't think that's what the law provides?

19 A. I don't think that you treble up the policy damages. I  
20 disagree with you.

21 Q. What do you treble up then?

22 A. You treble up damages that do not flow from the policy. You  
23 don't treble contract damages. There is no authority other  
24 than that one case that I don't remember years ago that -- I  
25 mean, it is just not done.

CYNTHIA MARTINEZ MONTALVO, CSR  
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MR. CHARLES L. LEVY - JULY 29, 2013  
Cross-Examination by MR. TOUPS

1 Q. Well, let me ask you this:

2 Assume the jury gives in punitive damages \$180,000,  
3 if you make that assumption, if they put that in as punitive  
4 damages 180,000 and you add that to the 61, what is that total?

5 A. You are just asking me to do the math? 180 and 61 is 241,000.

6 Q. Okay.

7 MR. TOUPS: That is all we have. Thank you.

8 MR. JONES: One question, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. JONES:

11 Q. Based on the Mr. Touns' believe that it might be three times as  
12 much, if in fact that is right, what do you believe a  
13 reasonable attorney's fee would have been on or about  
14 November 12th, 2010?

15 A. Only because you asked the question, I think that I can still  
16 multiply 3 times 600. That would be 1800.

17 Q. Okay.

18 A. But I believe what my testimony was --

19 Q. Does that change your opinion that this constitutes an  
20 excessive demand?

21 A. It is an excessive demand.

22 MR. JONES: Thank you, your Honor. I will offer this  
23 testimony to Court for the reasons we discussed previously.

24 THE COURT: The offer denied.

25 MR. JONES: Thank you, your Honor. May I have this marked

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MR. CHARLES L. LEVY - JULY 29, 2013  
Redirect Examination by MR. JONES

1 as part of the Bill of Exceptions?

2 THE COURT: You may.

3 MR. JONES: Thank you, your Honor.

4 (Hearing ended)

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CYNTHIA MARTINEZ MONTALVO, CSR  
152ND DISTRICT COURT  
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# Tab F

Judgment/Events Docket as of 3/24/2015

**JUDGMENT/EVENTS**

Date	Description	Order Signed	Post Jdgm	Pgs	Volume /Page	Filing Attorney	Person Filing
11/25/2014	MOTION NEW TRIAL OVERRULED BY OPERATION OF LAW			0			
11/7/2014	ORDER MODIFYING AND AMENDING TEMPORARY ORDERS SIGNED	11/7/2014		6			
10/15/2014	MOTION NEW TRIAL			0		JONES, DAVID VERNON	STATE FARM LLOYDS
9/15/2014	JUDGMENT SIGNED FOR PLAINTIFF ON JURY VERDICT	9/15/2014		5			
9/15/2014	ORDER SIGNED DENYING ENTRY OF JUDGMENT	9/15/2014		1			
9/15/2014	NO COSTS ALLOCATED			0			
8/1/2013	JURY DELIBERATING			0			
8/1/2013	HOLD FOR JUDGMENT			0			
8/1/2013	JURY VERDICT RENDERED			0			
7/31/2013	JURY DELIBERATING			0			
7/30/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)			0			
7/30/2013	JURY DELIBERATING			0			
7/29/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)			0			
7/25/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)			0			
7/24/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)			0			
7/23/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)			0			
7/22/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)			0			
7/18/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)			0			
7/17/2013	THIRD AMENDED ANSWER THIRD AMENDED ORIGINAL PETITI			0		BATIS, EDWARD J. JR.	STATE FARM LLOYDS
7/17/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)			0			

7/16/2013	JURY WAS SWORN		0		
7/16/2013	JURY PANEL EXAMINED ON VOIR DIRE		0		
7/16/2013	TO TRIAL ON MERITS (JURY)		0		
7/16/2013	ORDER GRANTING MTN IN LIMINE IN PART SIGNED SEE ORDER	7/16/2013	19		
7/16/2013	ORDER TRANSFERRING CASE TO ANOTHER DISTRICT COURT SIGNED	7/16/2013	2		
7/16/2013	THIRD AMENDED ORIGINAL PETITION		0	MOSTYN, JOHN STEVEN	FUENTES, MARIA
7/16/2013	TRIAL PREPARATION ORDER SIGNED	7/16/2013	2		
7/16/2013	EVIDENCE PRESENTED JURY TRIAL (EACH DAY)		0		
7/16/2013	PRE TRIAL CONFERENCE HELD		0		
7/16/2013	THIRD AMENDED ORIGINAL PETITION		0	MOSTYN, JOHN STEVEN	FUENTES, CANDELARIO
7/15/2013	ORDER OF PARTIAL NONSUIT SIGNED	7/15/2013	1		
7/15/2013	ORDER SIGNED STRIKING PLEADING	7/15/2013	1		
7/15/2013	ORDER GRANTING MTN IN LIMINE IN PART SIGNED SEE ORDER	7/15/2013	15		
7/15/2013	ORDER GRANTING MTN IN LIMINE IN PART SIGNED SEE ORDER	7/15/2013	16		
7/15/2013	TRANSFERRED TO ANOTHER HARRIS COUNTY DISTRICT COURT		0		
7/15/2013	ORDER TRANSFERRING CASE TO ANOTHER DISTRICT COURT SIGNED	7/15/2013	1		
7/15/2013	ORDER SIGNED DENYING EXCLUSION OF EXPERTS OPINIONS	7/15/2013	1		
7/15/2013	ORDER GRANTING MOTION TO TAKE JUDICIAL NOTICE SIGNED	7/15/2013	1		
7/15/2013	ORDER SIGNED STRIKING PLEADING	7/15/2013	1		
7/15/2013	TRANSFERRED TO HARRIS COUNTY DISTRICT COURT		0		
7/15/2013	PRE TRIAL CONFERENCE HELD		0		

7/12/2013	PRE TRIAL CONFERENCE HELD		0		
7/11/2013	PRE TRIAL CONFERENCE HELD		0		
7/10/2013	SECOND AMENDED ORIGINAL PETITION		0	MOSTYN, JOHN STEVEN	FUENTES, CANDELARIO
7/10/2013	SECOND AMENDED ORIGINAL PETITION		0	MOSTYN, JOHN STEVEN	FUENTES, MARIA
7/9/2013	FIRST AMENDED ORIGINAL PETITION		0	MOSTYN, JOHN STEVEN	FUENTES, MARIA
7/9/2013	FIRST AMENDED ORIGINAL PETITION		0	MOSTYN, JOHN STEVEN	FUENTES, CANDELARIO
7/8/2013	MOTION FOR FINAL SUMMARY JUDGMENT DENIED		0		
6/27/2013	ORDER MODIFYING AND AMENDING TEMPORARY ORDERS SIGNED	6/27/2013	2		
6/27/2013	ORDER SIGNED COMPELLING PRODUCTION IN PART SEE ORDER	6/27/2013	2		
6/27/2013	ORDER SIGNED STAYING PROCEEDINGS	6/27/2013	2		
6/24/2013	ORDER SIGNED COMPELLING PRODUCTION	6/24/2013	1		
6/24/2013	ORDER SGND DENYING STAY OF PROCEEDINGS	6/24/2013	1		
6/11/2013	SECOND AMENDED ANSWER ORIGINAL PETITION		0	BATIS, EDWARD J. JR.	STATE FARM LLOYDS
6/10/2013	FIRST AMENDED ANSWER ORIGINAL PETITION		0	JONES, DAVID VERNON	STATE FARM LLOYDS
10/19/2012	ORDER SIGNED SUBSTITUTING ATTORNEY OF RECORD	10/19/2012	1		
4/25/2012	REMOVED FROM ABATEMENT STATUS		0		
2/28/2012	DESIGNATED TRIAL READY		0		
2/28/2012	CASE ABATED		0		
10/29/2010	ANSWER ORIGINAL PETITION		0	BURKE, MELINDA RUTH	STATE FARM LLOYDS
10/29/2010	ANSWER ORIGINAL PETITION		0	BURKE, MELINDA RUTH	STATE FARM FIRE AND CASUALTY COMPANY
10/29/2010	ANSWER ORIGINAL PETITION		0	BURKE, MELINDA RUTH	STATE FARM GENERAL INSURANCE COMPANY
9/17/2010	TRANSFERRED TO ANOTHER HARRIS COUNTY DISTRICT		0		

COURT

9/17/2010	JURY FEE PAID (TRCP 216)	0		
9/17/2010	TRANSFERRED TO HARRIS COUNTY DISTRICT COURT	0		
9/17/2010	ORIGINAL PETITION	0	MOSTYN, JOHN STEVEN	FUENTES, CANDELARIO
9/17/2010	ORIGINAL PETITION	0	MOSTYN, JOHN STEVEN	FUENTES, MARIA

# Tab G

Texas Rules of Civil Procedure – Rule 301

Vernon's Texas Rules Annotated  
Texas Rules of Civil Procedure  
Part II. Rules of Practice in District and County Courts  
Section 11. Trial of Causes  
H. Judgments

TX Rules of Civil Procedure, Rule 301

Rule 301. Judgments

Currentness

The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

**Credits**

Oct. 29, 1940, eff. Sept. 1, 1941. Amended by order of July 15, 1987, eff. Jan. 1, 1988.

**Editors' Notes**

**OPINIONS OF SUBCOMMITTEE ON INTERPRETATION OF RULES**

**Applicability of rule**

This rule was not properly cited as authority in the opinion in the case of *Starr et al. v. Ferguson*, 166 S.W.2d 131, for the reason that the case was tried before the new rules became effective and the Supreme Court has since stricken the reference from the opinion. 6 Texas B.J. 77 (1943); 8 Texas B.J. 33 (1945).

**Notes of Decisions (2972)**

Vernon's Ann. Texas Rules Civ. Proc., Rule 301, TX R RCP Rule 301

Current with amendments received through August 15, 2014

# Tab H

Texas Rules of Evidence – Rule 401



Vernon's Texas Rules Annotated

Texas Rules of Evidence (Refs & Annos)

Article IV. Relevancy and Its Limits (Refs & Annos)

TX Rules of Evidence, Rule 401

Rule 401. Definition of "Relevant Evidence"

Currentness

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

**Credits**

Eff. March 1, 1998.

Notes of Decisions (204)

Rules of Evid., Rule 401, TX R EVID Rule 401

Current with amendments received through August 15, 2014

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# Tab I

Texas Rules of Evidence – Rule 402

Vernon's Texas Rules Annotated

Texas Rules of Evidence (Refs & Annos)

Article IV. Relevancy and Its Limits (Refs & Annos)

TX Rules of Evidence, Rule 402

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

Currentness

All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.

**Credits**

Eff. March 1, 1998.

Notes of Decisions (710)

Rules of Evid., Rule 402, TX R EVID Rule 402

Current with amendments received through August 15, 2014

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# Tab J

Policy 53-P4-7593-8  
(RR 19:11-52)

**State Farm Lloyds**8900 Amberglow Boulevard  
Austin, TX 78729-1110

H-25- 8579-F113 H F

FUENTES, CANDELARIO F &  
MARIA N  
114 LONG DR  
BAYTOWN TX 77521-4505

Location: Same as Mailing Address

**Loss Settlement Provisions (See Policy)**  
A1 Replacement Cost - Similar Construction  
B1 Limited Replacement Cost - Coverage B**Forms, Options, and Endorsements**Homeowners Policy  
Ordinance/Law 10% / \$7,180  
Fungus (Including Mold) Excl  
Special Limits - Money/Jr  
Water Damage Endorsement  
Coverage a Loss Settlement  
Motor Vehicle Endorsement  
Telecommuter Coverage  
Suit Against Us Endorsement  
Dwelling Foundation  
Amendatory EndorsementFP-7955.TX  
OPT DL  
FE-5398  
FE-5258  
FE-5369.1  
FE-5403  
FE-5452  
FE-5831  
FE-5503  
\* FE-5368.1  
\* FE-2200.1

\*Effective: JUL 20 2008

**RENEWAL CERTIFICATE**

POLICY NUMBER 53-P4-7593-8

Homeowners Policy  
JUL 20 2008 to JUL 20 2009**TO BE PAID BY MORTGAGEE****Coverages and Limits****Section I**

A Dwelling		\$71,800
Dwelling Extension	Up To	7,180
B Personal Property		53,850
C Loss of Use		Actual Loss Sustained

**Deductibles - Section I**

Other Losses	1,000
Wind or Hail 2.00%	1,436

**Section II**

L Personal Liability	\$300,000
Damage to Property of Others	500
M Medical Payments to Others (Each Person)	1,000

<b>Annual Premium</b>	\$950.00
Dwelling Foundation	93.00
Water Damage	114.00
<b>Total Amount</b>	\$1,157.00

**Premium Reductions**

Renewal Discount	156.00
------------------	--------

Inflation Coverage Index: 182.3

NOTICE: Information concerning changes in your coverage is included. Please call your agent if you have any questions.

**SF PROD 0160**  
[Fuentes]If you have moved, please contact your agent.  
See reverse side for important information.

REP

Prepared JUN 05 2008

Thanks for letting us serve you. We appreciate our long term customers.  
 4370 4018  
 N \* O.H.D. Agent PAUL WANKOWICZ  
 Telephone (281) 428-7505

**CONTINUED FROM FRONT**

Pages: CITIMORTGAGE INC  
ITS SUCCESSORS AND/OR ASSIGNS

Loan No: 0001221433

**Insurance coverage amount....**

It is up to you to choose the coverages and limits that meet your needs. We recommend that you purchase a coverage limit equal to the estimated replacement cost of your home. Replacement cost estimates are available from building contractors and replacement cost appraisers, or, your agent can provide an estimate from Xactware, Inc. using information you provide about your home. We can accept the type of estimate you choose as long as it provides a reasonable level of detail about your home. State Farm does not guarantee that any estimate will be the actual future cost to rebuild your home. Higher limits are available at higher premiums. Lower limits are also available, which if selected may make certain coverages unavailable to you. We encourage you to periodically review your coverages and limits with your agent and to notify us of any changes or additions to your home.

**DIVIDEND PROVISION - PARTICIPATING COMPANIES**

The Named Insured shall be entitled to participate in a distribution of the surplus of the Company, as determined from time to time by its Board of Directors, subject, however, to regulatory approval as provided by the Texas Insurance Code of 1951, as amended, and subject to other applicable law of the State of Texas which includes the rules and regulations of the State Board of Insurance and the amendments thereto.

011208v Rev 05-2006

**NOTICE TO POLICYHOLDER:**

For a comprehensive description of coverages and forms, please refer to your policy.

Policy changes requested before the "Date Prepared", which appear on this notice, are effective on the Renewal Date of this policy unless otherwise indicated by a separate endorsement, binder, or amended declarations. Any coverage forms attached to this notice are also effective on the Renewal Date of this policy.

Policy changes requested after the "Date Prepared" will be sent to you as an amended declarations or as an endorsement to your policy. Billing for any additional premium for such changes will be mailed at a later date.

If during the past year, you've acquired any valuable property items, made any improvements to insured property, or have any questions about your insurance coverage, contact your State Farm agent.

Please keep this with your policy.

(011008qg) Rev. 05-2005

(011313aa)

**SF PROD 0161**  
**[Fuentes]**



# HOMEOWNERS POLICY



FP-7955 TX

INSURED  
BY  
U.S.A.

This policy is one of the broadest forms available today, and provides you with outstanding value for your insurance dollars. However, we want to point out that every policy contains limitations and exclusions. Please read your policy carefully, especially "Losses Not Insured" and all exclusions.

SF PROD 0162  
[Fuentes]

Def Ex. 1-5

J003

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### DECLARATIONS

Your Name  
Location of Your Residence  
Policy Period  
Coverages  
Limits of Liability  
Deductibles

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## HOMEOWNERS POLICY

### DECLARATIONS CONTINUED

We agree to provide the insurance described in this policy:

1. based on your payment of premium for the coverages you chose;
2. based on your compliance with all applicable provisions of this policy; and
3. in reliance on your statements in these Declarations.

You agree, by acceptance of this policy, that:

1. you will pay premiums when due and comply with the provisions of the policy;
2. the statements in these Declarations are your statements and are true;

3. we insure you on the basis your statements are true; and
4. this policy contains all of the agreements between you and us and any of our agents.

Unless otherwise indicated in the application, you state that during the three years preceding the time of your application for this insurance your Loss History and Insurance History are as follows:

1. Loss History: you and the members of your household have not had any losses which were paid under prior policies; and
2. Insurance History: you have not had any insurer or agency cancel or refuse to issue or renew similar insurance to you or any household member.

### DEFINITIONS

"You" and "your" mean the "named insured" shown in the Declarations. Your spouse is included if a resident of your household. "We", "us" and "our" mean the Company shown in the Declarations.

Certain words and phrases are defined as follows:

1. "bodily injury" means physical harm to a person, including any resulting sickness or disease. This includes the required care, loss of services and death resulting therefrom.

Bodily injury does not include:

- a. the transmission of a communicable disease by any insured to any other person;
  - b. the exposure to any communicable disease by any insured to any other person; or
  - c. emotional distress, mental anguish, humiliation, mental injury, or similar injury unless it arises out of actual physical injury to some person.
2. "business" means a trade, profession or occupation. This includes farming.

3. "business day" means a day other than a Saturday, Sunday or holiday recognized by the state of Texas.

4. "communicable disease" means bacteria, parasite, virus or other organism transmissible from person to person due to direct contact with an affected person or that person's discharges.

5. "Declarations" means the policy Declarations, any amended Declarations, the most recent renewal notice or certificate, an Evidence of Insurance form or any endorsement changing any of these.

6. "insured" means you and, if residents of your household

a. your relatives; and

b. any other person under the age of 21 who is in the care of a person described above.

Under Section II, "insured" also means:

- c. with respect to animals or watercraft to which this policy applies, the person or organization legally responsible for them. However, the animal or watercraft must be owned by you or a person included in

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6.a. or 6.b. A person or organization using or having custody of these animals or watercraft in the course of a business, or without permission of the owner, is not an insured; and

d. with respect to any vehicle to which this policy applies, any person while engaged in your employment or the employment of a person included in 6.a. or 6.b.

7. "insured location" means:

a. the residence premises;

b. the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;

c. any premises used by you in connection with the premises included in 7.a. or 7.b.;

d. any part of a premises not owned by an insured but where an insured is temporarily residing;

e. land owned by or rented to an insured on which a one or two family dwelling is being constructed as a residence for an insured;

f. individual or family cemetery plots or burial vaults owned by an insured;

g. any part of a premises occasionally rented to an insured for other than business purposes;

h. vacant and owned by or rented to an insured. This does not include farm land; and

i. farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

8. "motor vehicle", when used in Section II of this policy, means:

a. a motorized land vehicle designed for travel on public roads or subject to motor vehicle registration. A motorized land vehicle in dead storage on an insured location is not a motor vehicle;

b. a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration. A boat, camp, home or utility trailer not being towed by or carried on a vehicle included in 8.a. is not a motor vehicle;

c. a motorized golf cart, snowmobile, motorized bicycle, motorized tricycle, all-terrain vehicle or any other similar type equipment owned by an insured and designed or used for recreational or utility purposes off public roads, while off an insured location. A motorized golf cart while used for golfing purposes is not a motor vehicle; and

d. any vehicle while being towed by or carried on a vehicle included in 8.a., 8.b. or 8.c.

9. "occurrence", when used in Section II of this policy, means an accident, including exposure to conditions, which results in:

a. bodily injury; or

b. property damage;

during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one occurrence.

10. "property damage" means physical damage to or destruction of tangible property, including loss of use of this property. Theft or conversion of property by any insured is not property damage.

11. "residence employee" means an employee of an insured who performs duties, including household or domestic services, in connection with the maintenance or use of the residence premises. This includes employees who perform similar duties elsewhere for you. This does not include employees while performing duties in connection with the business of an insured.

12. "residence premises" means:

a. the one, two, three or four-family dwelling, other structures and grounds; or

b. that part of any other building;

where you reside and which is shown in the Declarations.

## SECTION I - COVERAGES

### COVERAGE A - DWELLING

1. **Dwelling.** We cover the dwelling used principally as a private residence on the residence premises shown in the Declarations.

Dwelling includes:

- structures attached to the dwelling;
  - materials and supplies located on or adjacent to the residence premises for use in the construction, alteration or repair of the dwelling or other structures on the residence premises;
  - foundation, floor slab and footings supporting the dwelling; and
  - wall-to-wall carpeting attached to the dwelling.
2. **Dwelling Extension.** We cover other structures on the residence premises, separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered to be other structures.

We do not cover other structures:

- not permanently attached to or otherwise forming a part of the realty;
  - used in whole or in part for business purposes; or
  - rented or held for rental to a person not a tenant of the dwelling, unless used solely as a private garage.
3. **Property Not Covered.** We do not cover:
- land, including the land necessary to support any Coverage A property;
  - any costs required to replace, rebuild, stabilize, or otherwise restore the land; or
  - the costs of repair techniques designed to compensate for or prevent land instability to any property, whether or not insured under Coverage A.

### COVERAGE B - PERSONAL PROPERTY

1. **Property Covered.** We cover personal property owned or used by an insured while it is anywhere in

the world. This includes structures not permanently attached to or otherwise forming a part of the realty. At your request, we will cover personal property owned by others while the property is on the part of the residence premises occupied exclusively by an insured. At your request, we will also cover personal property owned by a guest or a residence employee, while the property is in any other residence occupied by an insured.

We cover personal property usually situated at an insured's residence, other than the residence premises, for up to \$1,000 or 10% of the Coverage B limit, whichever is greater. This limitation does not apply to personal property in a newly acquired principal residence for the first 30 days after you start moving the property there. If the residence premises is a newly acquired principal residence, personal property in your immediate past principal residence is not subject to this limitation for the first 30 days after the inception of this policy.

**Special Limits of Liability.** These limits do not increase the Coverage B limit. The special limit for each of the following categories is the total limit for each loss for all property in that category:

- \$200 on money, coins and medals, including any of these that are a part of a collection, and bank notes;
  - \$1,000 on property used or intended for use in a business, including merchandise held as samples or for sale or for delivery after sale, while on the residence premises. This coverage is limited to \$250 on such property away from the residence premises.
- Electronic data processing system equipment or the recording or storage media used with that equipment is not included under this coverage;
- \$1,000 on securities, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports and tickets;

- d. \$1,000 on watercraft of all types and outboard motors, including their trailers, furnishings and equipment;
  - e. \$1,000 on trailers not used with watercraft;
  - f. \$2,500 on stamps, trading cards and comic books, including any of these that are a part of a collection;
  - g. \$2,500 for loss by theft of firearms;
  - h. \$2,500 for loss by theft of silverware and goldware;
  - i. \$5,000 on electronic data processing system equipment and the recording or storage media used with that equipment. There is no coverage for said equipment or media while located away from the residence premises except when said equipment or media are removed from the residence premises for the purpose of repair, servicing or temporary use. An insured student's equipment and media are covered while at a residence away from home; and
  - j. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any rug, carpet (except wall-to-wall carpet), tapestry, wall-hanging or other similar article.
2. **Property Not Covered.** We do not cover:
- a. articles separately described and specifically insured in this or any other insurance;
  - b. animals, birds or fish;
  - c. any engine or motor propelled vehicle or machine, including the parts, designed for movement on land. We do cover those not licensed for use on public highways which are:
    - (1) used solely to service the insured location; or
    - (2) designed for assisting the handicapped;
  - d. devices or instruments for the recording or reproduction of sound permanently attached to an engine or motor propelled vehicle. We do not cover tapes, wires, records or other mediums that may be used with these devices or instruments while in the vehicle;
  - e. aircraft and parts, except model or hobby aircraft not used or designed to carry people or cargo;
  - f. property of roomers, boarders, tenants and other residents not related to an insured. We do cover property of roomers, boarders and other residents related to an insured;
  - g. property regularly rented or held for rental to others by an insured. This exclusion does not apply to property of an insured in a sleeping room rented to others by an insured;
  - h. property rented or held for rental to others away from the residence premises;
  - i. any citizens band radios, radio telephones, radio transceivers, radio transmitters, radar or laser detectors, antennas and other similar equipment permanently attached to an engine or motor propelled vehicle;
  - j. books of account, abstracts, drawings, card index systems and other records. This exclusion does not apply to any recording or storage media for electronic data processing. We will cover the cost of blank books, cards or other blank material plus the cost of labor you incur for transcribing or copying such records; or
  - k. recording or storage media for electronic data processing that cannot be replaced with other of like kind and quality on the current retail market.

#### COVERAGE C - LOSS OF USE

1. **Additional Living Expense.** When a Loss Insured causes the residence premises to become uninhabitable, we will cover the necessary increase in cost you incur to maintain your standard of living for up to 24 months. Our payment is limited to incurred costs for the shortest of: (a) the time required to repair or replace the premises; (b) the time required for your household to settle elsewhere; or (c) 24 months. This coverage is not reduced by the expiration of this policy.
2. **Fair Rental Value.** When a Loss Insured causes that part of the residence premises rented to others or held for rental by you to become uninhabitable, we will cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of

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the premises rented or held for rental, but not to exceed 12 months. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expense that does not continue while that part of the residence premises rented or held for rental is uninhabitable.

3. **Prohibited Use.** When a civil authority prohibits your use of the residence premises because of direct damage to a neighboring premises by a Loss Insured, we will cover any resulting Additional Living Expense and Fair Rental Value. Coverage is for a period not exceeding two weeks while use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement.

#### SECTION I - ADDITIONAL COVERAGES

The following Additional Coverages are subject to all the terms, provisions, exclusions and conditions of this policy.

1. **Debris Removal.** We will pay the reasonable expenses you incur in the removal of debris of covered property damaged by a Loss Insured. This expense is included in the limit applying to the damaged property.

When the amount payable for the property damage plus the debris removal exceeds the limit for the damaged property, an additional 5% of that limit is available for debris removal expense. This additional amount of insurance does not apply to Additional Coverage, item 3. Trees, Shrubs and Other Plants.

We will also pay up to \$500 in the aggregate for each loss to cover the reasonable expenses you incur in the removal of tree debris from the residence premises when the tree has caused a Loss Insured to Coverage A property.

2. **Temporary Repairs.** If damage is caused by a Loss Insured, we will pay the reasonable and necessary cost you incur for temporary repairs to covered property to protect the property from further immediate damage or loss. This coverage does not increase the limit applying to the property being repaired.
3. **Trees, Shrubs and Other Plants.** We cover outdoor trees, shrubs, plants or lawns, on the residence premises, for direct loss caused by the following: Fire or lightning, Explosion, Riot or civil commotion, Aircraft,

Vehicles (not owned or operated by a resident of the residence premises), Vandalism or malicious mischief or Theft.

The limit for this coverage, including the removal of debris, shall not exceed 5% of the amount shown in the Declarations for COVERAGE A - DWELLING. We will not pay more than \$500 for any one outdoor tree, shrub or plant, including debris removal expense. This coverage may increase the limit otherwise applicable. We do not cover property grown for business purposes.

4. **Property Removed.** Covered property, while being removed from a premises endangered by a Loss Insured, is covered for any accidental direct physical loss. This coverage also applies to the property for up to 30 days while removed. We will also pay for reasonable expenses incurred by you for the removal and return of the covered property. This coverage does not increase the limit applying to the property being removed.

5. **Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money.**

a. We will pay up to \$1,000 for:

- (1) the legal obligation of an insured to pay because of the theft or unauthorized use of credit cards and bank fund transfer cards issued to or registered in an insured's name. If an insured has not complied with all terms and conditions under which the cards are issued, we do not cover use by an insured or anyone else;
- (2) loss to an insured caused by forgery or alteration of any check or negotiable instrument; and
- (3) loss to an insured through acceptance in good faith of counterfeit United States or Canadian paper currency.

No deductible applies to this coverage.

We will not pay more than the limit stated above for forgery or alteration committed by any one person. This limit applies when the forgery or alteration involves one or more instruments in the same loss.

- b. We do not cover loss arising out of business pursuits or dishonesty of an insured.

c. **Defense:**

- (1) We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend claims or suits ends when the amount we pay for the loss equals our limit of liability.
  - (2) If claim is made or a suit is brought against an insured for liability under the Credit Card or Bank Fund Transfer Card coverage, we will provide a defense. This defense is at our expense by counsel of our choice.
  - (3) We have the option to defend at our expense an insured or an insured's bank against any suit for the enforcement of payment under the Forgery coverage.
6. **Power Interruption.** We cover accidental direct physical loss caused directly or indirectly by a change of temperature which results from power interruption that takes place on the residence premises. The power interruption must be caused by a Loss Insured occurring on the residence premises. The power lines off the residence premises must remain energized. This coverage does not increase the limit applying to the damaged property.
7. **Refrigerated Products.** Coverage B is extended to cover the contents of deep freeze or refrigerated units on the residence premises for loss due to power failure or mechanical failure. If mechanical failure or power failure is known to you, all reasonable means must be used to protect the property insured from further damage or this coverage is void. Power failure or mechanical failure shall not include:
- a. removal of a plug from an electrical outlet; or
  - b. turning off an electrical switch unless caused by a Loss Insured.
- This coverage does not increase the limit applying to the damaged property.
8. **Arson Reward.** We will pay \$1,000 for information which leads to an arson conviction in connection with a fire loss to property covered by this policy. This coverage may increase the limit otherwise applicable. How-

ever, the \$1,000 limit shall not be increased regardless of the number of persons providing information.

9. **Volcanic Action.** We cover direct physical loss to a covered building or covered property contained in a building resulting from the eruption of a volcano when the loss is directly and immediately caused by:
- a. volcanic blast or airborne shock waves;
  - b. ash, dust or particulate matter; or
  - c. lava flow.

We will also pay for the removal of that ash, dust or particulate matter which has caused direct physical loss to a covered building or covered property contained in a building.

One or more volcanic eruptions that occur within a 72-hour period shall be considered one volcanic eruption.

This coverage does not increase the limit applying to the damaged property.

10. **Collapse.** We insure only for direct physical loss to covered property involving the sudden, entire collapse of a building or any part of a building.

Collapse means actually fallen down or fallen into pieces. It does not include settling, cracking, shrinking, bulging, expansion, sagging or bowing.

The collapse must be directly and immediately caused only by one or more of the following:

- a. perils described in **SECTION I - LOSSES INSURED, COVERAGE B - PERSONAL PROPERTY.** These perils apply to covered building and personal property for loss insured by this Additional Coverage;
- b. hidden decay of a supporting or weight-bearing structural member of the building;
- c. hidden insect or vermin damage to a structural member of the building;
- d. weight of contents, equipment, animals or people;
- e. weight of ice, snow, sleet or rain which collects on a roof; or

7. use of defective material or methods in the construction (includes remodeling or renovation) of the building, if the collapse occurs during the course of the construction of the building.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b., c., d., e. and f. unless the loss is the direct and immediate cause of the collapse of the building.

This coverage does not increase the limit applying to the damaged property.

11. **Locks.** We will pay the reasonable expenses you incur to re-key locks on exterior doors of the dwelling located on the residence premises, when the keys to those locks are a part of a covered theft loss.

No deductible applies to this coverage.

#### INFLATION COVERAGE

The limits of liability shown in the Declarations for Coverage A, Coverage B and, when applicable, Option ID will be increased at the same rate as the increase in the Inflation Coverage Index shown in the Declarations.

To find the limits on a given date:

1. divide the Index on that date by the Index as of the effective date of this Inflation Coverage provision; then
2. multiply the resulting factor by the limits of liability for Coverage A, Coverage B and Option ID separately.

The limits of liability will not be reduced to less than the amounts shown in the Declarations.

If during the term of this policy the Coverage A limit of liability is changed at your request, the effective date of this Inflation Coverage provision is changed to coincide with the effective date of such change.

### SECTION I - LOSSES INSURED

#### COVERAGE A - DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

#### COVERAGE B - PERSONAL PROPERTY

We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in SECTION I - LOSSES NOT INSURED:

1. **Fire or lightning.**
2. **Windstorm or hail.** This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

This peril includes loss to watercraft of all types and their trailers, furnishings, equipment, and outboard motors, only while inside a fully enclosed building.

3. **Explosion.**

4. **Riot or civil commotion.**
5. **Aircraft,** including self-propelled missiles and spacecraft.
6. **Vehicles,** meaning impact by a vehicle.
7. **Smoke,** meaning sudden and accidental damage from smoke.  
This peril does not include loss caused by smoke from agricultural smudging or industrial operations.
8. **Vandalism or malicious mischief,** meaning only willful and malicious damage to or destruction of property.
9. **Theft,** including attempted theft and loss of property from a known location when it is probable that the property has been stolen.

This peril does not include:

- a. loss of a precious or semi-precious stone from its setting;
- b. loss caused by theft:
  - (1) committed by an insured or by any other person regularly residing on the insured location.

Property of a student who is an insured is covered while located at a residence away from home, if the theft is committed by a person who is not an insured;

(2) in or to a dwelling under construction or of materials and supplies for use in the construction until the dwelling is completed and occupied; or

(3) from the part of a residence premises rented to others:

(a) caused by a tenant, members of the tenant's household, or the tenant's employees;

(b) of money, bank notes, bullion, gold, goldware, silver, silverware, pewterware, platinum, coins and medals;

(c) of securities, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets and stamps; or

(d) of jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones;

c. loss caused by theft that occurs away from the residence premises of:

(1) property while at any other residence owned, rented to, or occupied by an insured, except while an insured is temporarily residing there. Property of a student who is an insured is covered while at a residence away from home;

(2) watercraft of all types, including their furnishings, equipment and outboard motors; or

(3) trailers and campers designed to be pulled by or carried on a vehicle.

If the residence premises is a newly acquired principal residence, property in the immediate past principal residence shall not be considered property away from the residence premises for the first 30 days after the inception of this policy.

10. **Falling objects.** This peril does not include loss to property contained in a building unless the roof or an exterior wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. **Weight of ice, snow or sleet** which causes damage to property contained in a building.

12. **Sudden and accidental discharge or overflow** of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or from within a household appliance.

This peril does not include loss:

a. to the system or appliance from which the water or steam escaped;

b. caused by or resulting from freezing;

c. caused by or resulting from water or sewage from outside the residence premises plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or

d. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot.

13. **Sudden and accidental tearing asunder, cracking, burning or bulging** of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

This peril does not include loss:

a. caused by or resulting from freezing; or

b. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot.

14. **Freezing** of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance.

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This peril does not include loss on the residence premises while the dwelling is vacant, unoccupied or being constructed, unless you have used reasonable care to:

- a. maintain heat in the building; or
- b. shut off the water supply and drain the system and appliances of water.

15. Sudden and accidental damage to electrical appliances, devices, fixtures and wiring from an increase or decrease of artificially generated electrical current. We will pay up to \$1,000 under this peril for each damaged item described above.

16. Breakage of glass, meaning damage to personal property caused by breakage of glass which is a part of a building on the residence premises. There is no coverage for loss or damage to the glass.

## SECTION I - LOSSES NOT INSURED

1. We do not insure for any loss to the property described in Coverage A which consists of, or is directly and immediately caused by, one or more of the perils listed in Items a. through n. below, regardless of whether the loss occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

a. collapse, except as specifically provided in SECTION I - ADDITIONAL COVERAGES, Collapse;

b. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion only applies while the dwelling is vacant, unoccupied or being constructed. This exclusion does not apply if you have used reasonable care to:

- (1) maintain heat in the building; or
- (2) shut off the water supply and drain the system and appliances of water;

c. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a swimming pool, hot tub or spa, including their filtration and circulation systems, fence, pavement, patio, foundation, retaining wall, bulkhead, pier, wharf or dock;

d. theft in or to a dwelling under construction, or of materials and supplies for use in the construction, until the dwelling is completed and occupied;

e. vandalism or malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

f. continuous or repeated seepage or leakage of water or steam from a:

- (1) heating, air conditioning, or automatic fire protective sprinkler system;
- (2) household appliance; or
- (3) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors;

which occurs over a period of time. If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped;

g. wear, tear, marring, scratching, deterioration, inherent vice, latent defect or mechanical breakdown;

h. corrosion, electrolysis or rust;

i. mold, fungus or wet or dry rot;

j. contamination;

k. smog, smoke from agricultural smudging or industrial operations;

l. settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundation, walls, floors, roofs or ceilings;

m. birds, vermin, rodents, insects, or domestic animals. We do cover the breakage of glass or safety glazing material which is a part of a building, when caused by birds, vermin, rodents, insects or domestic animals; or

n. pressure from or presence of tree, shrub or plant roots.

However, we do insure for any resulting loss from items a. through m. unless the resulting loss is itself a Loss Not Insured by this Section.

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

a. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure.

b. **Earth Movement**, meaning the sinking, rising, shifting, expanding or contracting of earth, all whether combined with water or not. Earth movement includes but is not limited to earthquake, landslide, mudflow, mudslide, sinkhole, subsidence, erosion or movement resulting from improper compaction, site selection or any other external forces. Earth movement also includes volcanic explosion or lava flow, except as specifically provided in **SECTION 1 - ADDITIONAL COVERAGES, Volcanic Action**.

However, we do insure for any direct loss by fire resulting from earth movement, provided the resulting fire loss is itself a Loss Insured.

c. **Water Damage**, meaning:

(1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;

(2) water or sewage from outside the residence premises plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or

(3) water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do insure for any direct loss by fire, explosion or theft resulting from water damage, provided the resulting loss is itself a Loss Insured.

d. **Neglect**, meaning neglect of the insured to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered.

e. **War**, including any undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.

f. **Nuclear Hazard**, meaning any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion or smoke.

However, we do insure for any direct loss by fire resulting from the nuclear hazard, provided the resulting fire loss is itself a Loss Insured.

3. We do not insure under any coverage for any loss consisting of one or more of the items below. Further, we do not insure for loss described in paragraphs 1. and 2. immediately above regardless of whether one or more of the following: (a) directly or indirectly cause,

contribute to or aggravate the loss; or (b) occur before, at the same time, or after the loss or any other cause of the loss:

a. conduct, act, failure to act, or decision of any person, group, organization or governmental body, whether intentional, wrongful, negligent, or without fault;

b. defect, weakness, inadequacy, fault or unsoundness in:

(1) planning, zoning, development, surveying, siting;

(2) design, specifications, workmanship, construction, grading, compaction;

(3) materials used in construction or repair; or

(4) maintenance;

of any property (including land, structures, or improvements of any kind) whether on or off the residence premises; or

c. weather conditions.

However, we do insure for any resulting loss from items a., b. and c. unless the resulting loss is itself a Loss Not Insured by this Section.

## SECTION I - LOSS SETTLEMENT

Only the Loss Settlement provisions shown in the Declarations apply. We will settle covered property losses according to the following.

### COVERAGE A - DWELLING

#### 1. A1 - Replacement Cost Loss Settlement - Similar Construction.

a. We will pay up to the applicable limit of liability shown in the Declarations, the reasonable and necessary cost to repair or replace with similar construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences.

We will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option OL - Building Ordinance or Law Coverage.

b. Wood Fences: We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

#### 2. A2 - Replacement Cost Loss Settlement - Common Construction.

a. We will pay up to the applicable limit of liability shown in the Declarations, the reasonable and necessary cost to repair or replace with common construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:

(1) we will pay only for repair or replacement of the damaged part of the property with common construction techniques and materials commonly used by the building trades in standard new construction. We will not pay the cost to repair or replace obsolete, antique or custom construction with like kind and quality;

(2) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option OL - Building Ordinance or Law Coverage.

b. Wood Fences: We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

## COVERAGE B - PERSONAL PROPERTY

### 1. B1 - Limited Replacement Cost Loss Settlement.

- a. We will pay the cost to repair or replace property covered under SECTION I - COVERAGES, COVERAGE B - PERSONAL PROPERTY, except for property listed in item b. below, subject to the following:

- (1) until repair or replacement is completed, we will pay only the cost to repair or replace less depreciation;
- (2) after repair or replacement is completed, we will pay the difference between the cost to repair or replace less depreciation and the cost you have actually and necessarily spent to repair or replace the property; and
- (3) if property is not repaired or replaced within two years after the date of loss, we will pay only the cost to repair or replace less depreciation.

- b. We will pay market value at the time of loss for:

- (1) antiques, fine arts, paintings, statuary and similar articles which by their inherent nature cannot be replaced with new articles;
- (2) articles whose age or history contribute substantially to their value including, but not limited to, memorabilia, souvenirs and collectors items; and
- (3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

- (1) our cost to replace at the time of loss;
- (2) the full cost of repair;
- (3) any special limit of liability described in the policy; or
- (4) any applicable Coverage B limit of liability.

### 2. B2 - Depreciated Loss Settlement.

- a. We will pay the cost to repair or replace less depreciation at the time of loss for property covered under SECTION I - COVERAGES, COVERAGE B - PERSONAL PROPERTY, except for property listed in item b. below.

- b. We will pay market value at the time of loss for:

- (1) antiques, fine arts, paintings, statuary and similar articles which by their inherent nature cannot be replaced with new articles;
- (2) articles whose age or history contribute substantially to their value including, but not limited to, memorabilia, souvenirs and collectors items; and
- (3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

- (1) our cost to replace at the time of loss;
- (2) the full cost of repair;
- (3) any special limit of liability described in the policy; or
- (4) any applicable Coverage B limit of liability.

## SECTION I - CONDITIONS

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we shall not be liable:

- a. to the insured for an amount greater than the insured's interest; or
- b. for more than the applicable limit of liability.

Article 6.18. Policy A Liquidated Demand. A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. The provisions of this article shall not apply to personal property.

2. **Your Duties After Loss.** After a loss to which this insurance may apply, you shall see that the following duties are performed:



- a. give immediate notice to us or our agent. Also notify the police if the loss is caused by theft. Also notify the credit card company or bank if the loss involves a credit card or bank fund transfer card;
  - b. protect the property from further damage or loss; make reasonable and necessary temporary repairs required to protect the property; keep an accurate record of repair expenditures;
  - c. prepare an inventory of damaged or stolen personal property. Show in detail the quantity, description, age, replacement cost and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;
  - d. as often as we reasonably require:
    - (1) exhibit the damaged property;
    - (2) provide us with records and documents we request and permit us to make copies;
    - (3) submit to and subscribe, while not in the presence of any other insured:
      - (a) statements; and
      - (b) examinations under oath; and
    - (4) produce employees, members of the insured's household or others for examination under oath to the extent it is within the insured's power to do so; and
  - e. submit to us, within 91 days after the loss, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
    - (1) the time and cause of loss;
    - (2) interest of the insured and all others in the property involved and all encumbrances on the property;
    - (3) other insurance which may cover the loss;
    - (4) changes in title or occupancy of the property during the term of this policy;
    - (5) specifications of any damaged building and detailed estimates for repair of the damage;
    - (6) an inventory of damaged or stolen personal property described in 2.c.;
    - (7) receipts for additional living expenses incurred and records supporting the fair rental value loss; and
    - (8) evidence or affidavit supporting a claim under the Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money coverage stating the amount and cause of loss.
5. **Loss to a Pair or Set.** In case of loss to a pair or set, we may elect to:
    - a. repair or replace any part to restore the pair or set to its value before the loss; or
    - b. pay the difference between the depreciated value of the property before and after the loss.
  4. **Appraisal.** If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.
  5. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only our share of the loss. Our share is the proportion of the loss that the applicable limit under this policy bears to the total amount of insurance covering the loss.

6. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions and the action is started within two years and one day after the date of loss or damage.

7. **Our Option.** We may repair or replace any part of the property damaged or stolen with similar property. Any property we pay for or replace becomes our property.

8. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment.

If we notify you that we will pay your claim, or part of your claim, we must pay within 5 business days after we notify you. If payment of your claim or part of your claim requires the performance of an act by you, we must pay within 5 business days after the date you perform the act.

9. **Abandonment of Property.** We need not accept any property abandoned by an insured.

10. **Mortgage Clause** (without contribution).

a. The word "mortgagee" includes trustee.

b. We will pay for any covered loss of or damage to buildings or structures to the mortgagee shown in the Declarations as interests appear.

c. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building or structure.

d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgagee has the right to receive loss payment if the mortgagee:

(1) at our request, pays any premiums due under this policy, if you have failed to do so;

(2) submits a signed, sworn statement of loss within 90 days after receiving notice from us of your failure to do so; and

(3) has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgagee.

All of the terms of this policy will then apply directly to the mortgagee.

Failure of the mortgagee to comply with d.(1), d.(2) or d.(3) above shall void this policy as to the interest of the mortgagee.

e. If we pay the mortgagee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

(1) the mortgagee's rights under the mortgage will be transferred to us to the extent of the amount we pay; and

(2) the mortgagee's right to recover the full amount of the mortgagee's claim will not be impaired.

At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If this policy is cancelled, we will give the mortgagee specifically named in the Declarations written notice of cancellation.

If we cancel the policy, we will give the mortgagee the same number of days notice of cancellation we give to you.

If you cancel the policy, we will give the mortgagee notice of cancellation to be effective on the date stated in the notice. The date of cancellation cannot be before the 10th day after the date we mail the notice.

We will not give notice of cancellation to any successor or assignee of the mortgagee named in this policy.

g. If the property described under Coverage A (Dwelling) is foreclosed upon under the deed of trust, the mortgagee may cancel this policy of insurance and will be entitled to any unearned premiums from this policy.

The mortgagee must credit any unearned premium against any deficiency owed by the borrower and return any unearned premium not so credited to the borrower. The unearned premium will be figured using the customary pro rata procedures.

h. If we elect not to renew this policy, the mortgagee specifically named in the Declarations will be given 30 days written notice of the nonrenewal.

11. **No Benefit to Bailees.** We will not recognize an assignment or grant coverage for the benefit of a person or organization holding, storing or transporting property for a fee. This applies regardless of any other provision of this policy.

12. **Intentional Acts.** If you or any person insured under this policy causes or procures a loss to property covered under this policy for the purpose of obtaining insurance benefits, then this policy is void as to you and any other insured that caused or contributed to the loss or its procurement.

13. **Residential Community Property Clause.** This policy, subject to all other terms and conditions, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses unless excluded by endorsement attached to this policy until the expiration of the policy or until cancelled in accordance with the terms and conditions of this policy.

14. **Our Duties After Loss.**

a. Within 15 days after we receive your written notice of claim, we must:

(1) acknowledge receipt of the claim.

If our acknowledgment of the claim is not in writing, we will keep a record of the date, method and content of our acknowledgment;

(2) begin any investigation of the claim;

(3) specify the information you must provide in accordance with "Your Duties After Loss" (item 2. above).

We may request more information, if during the investigation of the claim such additional information is necessary.

b. After we receive the information we request, we must notify you in writing whether the claim will be paid or has been denied or whether more information is needed:

(1) within 15 business days; or

(2) within 30 days if we have reason to believe the loss resulted from arson.

c. If we do not approve payment of your claim or require more time for processing your claim, we must:

(1) give the reasons for denying your claim; or

(2) give the reasons we require more time to process your claim. But, we must either approve or deny your claim within 45 days after requesting more time.

15. **Catastrophe Claims.** If a claim results from a weather related catastrophe or major natural disaster, each claim handling deadline shown under the Duties After Loss and Loss Payment provisions is extended for an additional 15 days.

Catastrophe or Major Natural Disaster means a weather related event which:

a. is declared a disaster under the Texas Disaster Act of 1975; or

b. is determined to be a catastrophe by the State Board of Insurance.

## SECTION II - LIABILITY COVERAGES

### COVERAGE L - PERSONAL LIABILITY

If a claim is made or a suit is brought against an insured for damages because of bodily injury or property damage to which this coverage applies, caused by an occurrence, we will:

1. pay up to our limit of liability for the damages for which the insured is legally liable; and

2. provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation

tion to defend any claim or suit ends when the amount we pay for damages, to effect settlement or satisfy a judgment resulting from the occurrence, equals our limit of liability.

#### **COVERAGE M - MEDICAL PAYMENTS TO OTHERS**

We will pay the necessary medical expenses incurred or medically ascertained within three years from the date of an accident causing bodily injury. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage applies only:

1. to a person on the insured location with the permission of an insured;
2. to a person off the insured location, if the bodily injury:
  - a. arises out of a condition on the insured location or the ways immediately adjoining;
  - b. is caused by the activities of an insured;
  - c. is caused by a residence employee in the course of the residence employee's employment by an insured; or
  - d. is caused by an animal owned by or in the care of an insured; or
3. to a residence employee if the occurrence causing bodily injury occurs off the insured location and arises out of or in the course of the residence employee's employment by an insured.

#### **SECTION II - ADDITIONAL COVERAGES**

We cover the following in addition to the limits of liability:

1. **Claim Expenses.** We pay:
  - a. expenses we incur and costs taxed against an insured in suits we defend;
  - b. premiums on bonds required in suits we defend, but not for bond amounts greater than the Coverage L limit. We are not obligated to apply for or furnish any bond;
  - c. reasonable expenses an insured incurs at our request. This includes actual loss of earnings (but

not loss of other income) up to \$100 per day for aiding us in the investigation or defense of claims or suits;

- d. prejudgment interest awarded against the insured on that part of the judgment we pay; and
- e. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by an insured for bodily injury covered under this policy. We will not pay for first aid to you or any other insured.

#### **3. Damage to Property of Others.**

- a. We will pay for property damage to property of others caused by an insured.

- b. We will not pay more than the smallest of the following amounts:

- (1) replacement cost at the time of loss;
- (2) full cost of repair; or
- (3) \$500 in any one occurrence.

- c. We will not pay for property damage:

- (1) if insurance is otherwise provided in this policy;
- (2) caused intentionally by an insured who is 13 years of age or older;
- (3) to property, other than a rented golf cart, owned by or rented to an insured, a tenant of an insured, or a resident in your household; or

- (4) arising out of:

- (a) business pursuits;
- (b) any act or omission in connection with a premises an insured owns, rents or controls, other than the insured location; or
- (c) the ownership, maintenance, or use of a motor vehicle, aircraft, or watercraft, including airboat, air cushion, personal watercraft, sail board or similar type watercraft.



## SECTION II - EXCLUSIONS

### 1. Coverage L and Coverage M do not apply to:

#### a. bodily injury or property damage:

- (1) which is either expected or intended by the Insured; or
- (2) which is the result of willful and malicious acts of the Insured;

#### b. bodily injury or property damage arising out of business pursuits of any insured or the rental or holding for rental of any part of any premises by any insured. This exclusion does not apply:

- (1) to activities which are ordinarily incident to non-business pursuits;
- (2) with respect to Coverage L to the occasional or part-time business pursuits of an insured who is under 19 years of age;
- (3) to the rental or holding for rental of a residence of yours:
  - (a) on an occasional basis for the exclusive use as a residence;
  - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
  - (c) in part, as an office, school, studio or private garage;
- (4) when the dwelling on the residence premises is a two, three or four-family dwelling and you occupy one part and rent or hold for rental the other part; or
- (5) to farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations;

#### c. bodily injury or property damage arising out of the rendering or failing to render professional services;

#### d. bodily injury or property damage arising out of any premises currently owned or rented to any

Insured which is not an insured location. This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured;

#### e. bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of:

- (1) an aircraft, except model or hobby aircraft not used or designed to carry people or cargo;
- (2) a motor vehicle owned or operated by or rented or loaned to any insured; or
- (3) a watercraft:
  - (a) owned by or rented to any insured if it has inboard or inboard-outdrive motor power of more than 50 horsepower;
  - (b) owned by or rented to any insured if it is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;
  - (c) powered by one or more outboard motors with more than 25 total horsepower owned by any insured;
  - (d) designated as an airboat, air cushion, or similar type of craft; or
  - (e) owned by any insured which is a personal watercraft using a water jet pump powered by an internal combustion engine as the primary source of propulsion.

This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured. Exclusion e.(3) does not apply while the watercraft is on the residence premises;

#### f. bodily injury or property damage arising out of:

- (1) the entrustment by any insured to any person;
- (2) the supervision by any insured of any person;

(3) any liability statutorily imposed on any insured; or

(4) any liability assumed through an unwritten or written agreement by any insured;

with regard to the ownership, maintenance or use of any aircraft, watercraft, or motor vehicle which is not covered under Section II of this policy;

g. **bodily injury or property damage** caused directly or indirectly by war, including undeclared war, or any warlike act including destruction or seizure or use for a military purpose, or any consequence of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;

h. **bodily injury** to you or any insured within the meaning of part a. or b. of the definition of insured.

This exclusion also applies to any claim made or suit brought against you or any insured to share damages with or repay someone else who may be obligated to pay damages because of the **bodily injury** sustained by you or any insured within the meaning of part a. or b. of the definition of insured;

i. any claim made or suit brought against any insured by:

(1) any person who is in the care of any insured because of child care services provided by or at the direction of:

(a) any insured;

(b) any employee of any insured; or

(c) any other person actually or apparently acting on behalf of any insured; or

(2) any person who makes a claim because of **bodily injury** to any person who is in the care of any insured because of child care services provided by or at the direction of:

(a) any insured;

(b) any employee of any insured; or

(c) any other person actually or apparently acting on behalf of any insured.

This exclusion does not apply to the occasional child care services provided by any insured, or to the part-time child care services provided by any insured who is under 19 years of age; or

j. **bodily injury or property damage** arising out of an insured's participation in, or preparation or practice for any prearranged or organized race, speed or demolition contest, or similar competition involving a motorized land vehicle or motorized watercraft. This exclusion does not apply to a sailing vessel less than 26 feet in overall length with or without auxiliary power.

## 2. Coverage L does not apply to:

### a. liability:

(1) for your share of any loss assessment charged against all members of an association of property owners; or

(2) assumed under any unwritten contract or agreement, or by contract or agreement in connection with a business of the insured;

b. **property damage** to property currently owned by any insured;

c. **property damage** to property rented to, occupied or used by or in the care of any insured. This exclusion does not apply to property damage caused by fire, smoke or explosion;

d. **bodily injury** to a person eligible to receive any benefits required to be provided or voluntarily provided by an insured under a workers' compensation, non-occupational disability, or occupational disease law;

e. **bodily injury or property damage** for which an insured under this policy is also an insured under a nuclear energy liability policy or would be an insured but for its termination upon exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors.

3. Coverage M does not apply to bodily injury:

- a. to a residence employee if it occurs off the insured location and does not arise out of or in the course of the residence employee's employment by an insured;
- b. to a person eligible to receive any benefits required to be provided or voluntarily provided under any workers' compensation, non-occupational disability or occupational disease law;

- c. from nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these;
- d. to a person other than a residence employee of an insured, regularly residing on any part of the insured location.

## SECTION II - CONDITIONS

1. **Limit of Liability.** The Coverage L limit is shown in the Declarations. This is our limit for all damages from each occurrence regardless of the number of insureds, claims made or persons injured.

The Coverage M limit is shown in the Declarations. This is our limit for all medical expense for bodily injury to one person as the result of one accident.

2. **Severability of Insurance.** This insurance applies separately to each insured. This condition shall not increase our limit of liability for any one occurrence.

3. **Duties After Loss.** In case of an accident or occurrence, the insured shall perform the following duties that apply. You shall cooperate with us in seeing that these duties are performed:

- a. give written notice to us or our agent as soon as practicable, which sets forth:

- (1) the identity of this policy and insured;
- (2) reasonably available information on the time, place and circumstances of the accident or occurrence; and
- (3) names and addresses of any claimants and available witnesses;

- b. immediately forward to us every notice, demand, summons or other process relating to the accident or occurrence;

- c. at our request, assist in:

- (1) making settlement;

- (2) the enforcement of any right of contribution or indemnity against a person or organization who may be liable to an insured;

- (3) the conduct of suits and attend hearings and trials; and

- (4) securing and giving evidence and obtaining the attendance of witnesses;

- d. under the coverage - **Damage to Property of Others**, exhibit the damaged property if within the insured's control; and

- e. the insured shall not, except at the insured's own cost, voluntarily make payments, assume obligations or incur expenses. This does not apply to expense for first aid to others at the time of the bodily injury.

4. **Duties of an Injured Person - Coverage M.** The injured person, or, when appropriate, someone acting on behalf of that person, shall:

- a. give us written proof of claim, under oath if required, as soon as practicable;

- b. execute authorization to allow us to obtain copies of medical reports and records; and

- c. submit to physical examination by a physician selected by us when and as often as we reasonably require.

5. **Payment of Claim - Coverage M.** Payment under this coverage is not an admission of liability by an insured or us.

6. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions.

No one shall have the right to join us as a party to an action against an Insured. Further, no action with respect to Coverage L shall be brought against us until the obligation of the Insured has been determined by final judgment or agreement signed by us.

7. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an Insured shall not relieve us of our obligation under this policy.
8. **Other Insurance - Coverage L.** This insurance is excess over any other valid and collectible insurance

except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

9. **Notice of Settlement of Liability Claim.**

- a. We will notify the Insured in writing of any initial offer to compromise or settle a claim against the Insured. We will give the Insured notice within 10 days after the date the offer is made.
- b. We will notify the Insured in writing of any settlement of a claim against the Insured. We will give the Insured notice within 30 days after the date of the settlement.

**SECTION I AND SECTION II - CONDITIONS**

1. **Policy Period.** This policy applies only to loss under Section I or bodily injury or property damage under Section II which occurs during the period this policy is in effect.

2. **Concealment or Fraud.** This policy is void as to you and any other Insured, if you or any other Insured under this policy has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance, whether before or after a loss.

3. **Liberalization Clause.** If we adopt any revision which would broaden coverage under this policy without additional premium, within 60 days prior to or during the period this policy is in effect, the broadened coverage will immediately apply to this policy.

4. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.

5. **Cancellation.**

- a. You may cancel this policy at any time by notifying us of the date cancellation is to take effect. We will send you any refund due when the policy is returned to us.
- b. We may cancel this policy for the reasons stated in this condition by mailing you notice in writing of the date cancellation takes effect.

- (1) If this policy has been in effect for less than 90 days and is not a renewal policy, we may cancel for any reason.

The effective date of cancellation cannot be before:

- (a) the 10th day after we mail notice if we cancel for nonpayment of premium;
- (b) the 30th day after we mail notice if we cancel for any other reason.

- (2) If this policy has been in effect 90 days or more, we may not cancel this policy unless:

- (a) you do not pay the premium or any portion of the premium when due;
- (b) the State Board of Insurance determines that continuation of the policy would violate the Texas Insurance Code or any other laws governing the business of insurance in this state;
- (c) you submit a fraudulent claim;
- (d) there is an increase in the hazard covered by this policy that is within your control and that would produce an increase in the premium rate of this policy.

The effective date of cancellation cannot be before the 10th day after we mail the notice. Our notice of cancellation must state the reason for cancellation.

- c. If we cancel, our notice to you will state that if the refund is not included with the notice, it will be returned on demand.
- d. We may not cancel this policy solely because you are an elected official.

**6. Nonrenewal.**

- a. We may not refuse to renew this policy because of claims for losses resulting from natural causes.
- b. We may not refuse to renew this policy solely because you are an elected official.
- c. We may refuse to renew this policy if you have filed three or more claims under the policy in any three year period that do not result from natural causes.

If you have filed two claims in a period of less than three years, we may notify you in writing, that if you file a third claim during the three-year period, we may refuse to renew this policy by providing you proper notice of our refusal to renew as provided in d. below. If we do not notify you after the second claim, we may not refuse to renew this policy because of losses.

A claim does not include a claim that is filed but is not paid or payable under the policy.

- d. If we refuse to renew this policy, we must deliver to you, or mail to you at your mailing address shown in the Declarations and any mortgagee named in the Declarations, written notice of our refusal to renew not later than the 30th day before the date on which this policy expires. Proof of mailing will be sufficient proof of notice. If we fail to give you proper notice of our decision not to renew, you may require us to renew the policy.
7. **Assignment.** Assignment of this policy shall not be valid unless we give our written consent.
8. **Subrogation.** An insured may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of

recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an insured shall:

- a. sign and deliver all related papers;
- b. cooperate with us in a reasonable manner; and
- c. do nothing after a loss to prejudice such rights.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.

**9. Death.** If any person shown in the Declarations or the spouse, if a resident of the same household, dies:

- a. we insure the legal representative of the deceased. This condition applies only with respect to the premises and property of the deceased covered under this policy at the time of death;

**b. insured includes:**

- (1) any member of your household who is an insured at the time of your death, but only while a resident of the residence premises; and
- (2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

**10. Conformity to State Law.** When a policy provision is in conflict with the applicable law of the State in which this policy is issued, the law of the State will apply.

**11. Right to Inspect.** We have the right but are not obligated to make inspections and surveys at any time, give you reports on conditions we find and recommend changes. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged.

We do not:

- a. make safety inspections;
- b. undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public;
- c. warrant that conditions are safe or healthful; or



- d. warrant that conditions comply with laws, regulations, codes or standards.

This condition applies not only to us but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

## OPTIONAL POLICY PROVISIONS

Each Optional Policy Provision applies only as shown in the Declarations and is subject to all the terms, provisions, exclusions and conditions of this policy.

**Option AI - Additional Insured.** The definition of Insured is extended to include the person or organization shown in the Declarations as an Additional Insured or whose name is on file with us. Coverage is with respect to:

1. Section I - Coverage A; or
2. Section II - Coverages L and M but only with respect to the residence premises. This coverage does not apply to bodily injury to an employee arising out of or in the course of the employee's employment by the person or organization.

This option applies only with respect to the location shown in the Declarations.

**Option BP - Business Property.** The **COVERAGE B - PERSONAL PROPERTY**, Special Limits of Liability, item b., for property used or intended for use in a business, including merchandise held as samples or for sale or for delivery after sale, is changed as follows:

The \$1,000 limit is replaced with the amount shown in the Declarations for this option.

**Option BU - Business Pursuits. SECTION II - EXCLUSIONS**, item 1.b. is modified as follows:

1. Section II coverage applies to the business pursuits of an insured who is a:
  - a. clerical office employee, salesperson, collector, messenger; or
  - b. teacher (except college, university and professional athletic coaches), school principal or school administrator;

while acting within the scope of the above listed occupations.

2. However, no coverage is provided:

- a. for bodily injury or property damage arising out of a business owned or financially controlled by the insured or by a partnership of which the insured is a partner or member;

- b. for bodily injury or property damage arising out of the rendering of or failure to render professional services of any nature (other than teaching or school administration). This exclusion includes but is not limited to:

- (1) computer programming, architectural, engineering or industrial design services;

- (2) medical, surgical, dental or other services or treatment conducive to the health of persons or animals; and

- (3) beauty or barber services or treatment;

- c. for bodily injury to a fellow employee of the insured injured in the course of employment; or

- d. when the insured is a member of the faculty or teaching staff of a school or college:

- (1) for bodily injury or property damage arising out of the maintenance, use, loading or unloading of:

- (a) draft or saddle animals, including vehicles for use with them; or

- (b) aircraft, motor vehicles, recreational motor vehicles or watercraft, airboats, air cushions or personal watercraft which use a water jet pump powered by an

internal combustion engine as the primary source of propulsion;

owned or operated, or hired by or for the Insured or employer of the Insured or used by the Insured for the purpose of instruction in the use thereof; or

(2) under Coverage M for bodily injury to a pupil arising out of corporal punishment administered by or at the direction of the Insured.

**Option FA - Firearms.** Firearms are insured for accidental direct physical loss or damage.

The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. we do not insure for any loss to the property described in this option either consisting of, or directly and immediately caused by, one or more of the following:
  - a. mechanical breakdown, wear and tear, gradual deterioration;
  - b. insects or vermin;
  - c. any process of refinishing, renovating, or repairing;
  - d. dampness of atmosphere or extremes of temperatures;
  - e. inherent defect or faulty manufacture;
  - f. rust, fouling or explosion of firearms;
  - g. breakage, marling, scratching, tearing or denting unless caused by fire, thieves or accidents to conveyances; or
  - h. infidelity of an Insured's employees or persons to whom the insured property may be entrusted or rented;
2. our limit for loss by any Coverage B peril except theft is the limit shown in the Declarations for Coverage B, plus the aggregate limit;

3. our limits for loss by theft are those shown in the Declarations for this option. These limits apply in lieu of the Coverage B theft limit; and

4. our limits for loss by any covered peril except those in items 2. and 3. are those shown in the Declarations.

**Option HC - Home Computer.** The **COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability**, item 1, for electronic data processing system equipment and the recording or storage media used with that equipment is increased to be the amount shown in the Declarations for this option.

**Option ID - Increased Dwelling Limit.** We will settle losses to damaged building structures covered under **COVERAGE A - DWELLING** according to the **SECTION I - LOSS SETTLEMENT** provision shown in the Declarations.

If the reasonable and necessary cost to repair or replace damaged building structures exceeds the applicable limit of liability shown in the Declarations, we will pay the additional amounts not to exceed:

1. the Option ID limit of liability shown in the Declarations to repair or replace the Dwelling; or
2. 10% of the Option ID limit of liability to repair or replace building structures covered under **COVERAGE A - DWELLING, Dwelling Extension**.

**Report Increased Values.** You must notify us within 90 days of the start of any new building structure costing \$5,000 or more; or any additions to or remodeling of building structures which increase their values by \$5,000 or more. You must pay any additional premium due for the increased value. We will not pay more than the applicable limit of liability shown in the Declarations, if you fail to notify us of the increased value within 90 days.

**Option IO - Incidental Business.** The coverage provided by this option applies only to that incidental business occupancy on file with us.

1. **COVERAGE A - DWELLING, Dwelling Extension**, item 2.b. is deleted.
2. **COVERAGE B - PERSONAL PROPERTY** is extended to include equipment, supplies and furnishings usual and incidental to this business occupancy. This Optional Policy Provision does not include electronic

data processing system equipment or the recording or storage media used with that equipment or merchandise held as samples or for sale or for delivery after sale.

The Option 10 limits are shown in the Declarations. The first limit applies to property on the residence premises. The second limit applies to property while off the residence premises. These limits are in addition to the **COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability** on property used or intended for use in a business.

3. Under Section II, the residence premises is not considered business property because an insured occupies a part of it as an incidental business.

4. **SECTION II - EXCLUSIONS**, item 1.b. of Coverage L and Coverage M is replaced with the following:

- b. bodily injury or property damage arising out of business pursuits of an insured or the rental or holding for rental of any part of any premises by an insured. This exclusion does not apply:

- (1) to activities which are ordinarily incident to non-business pursuits or to business pursuits of an insured which are necessary or incidental to the use of the residence premises as an incidental business;

- (2) with respect to Coverage L, to the occasional or part-time business pursuits of an insured who is under 19 years of age;

- (3) to the rental or holding for rental of a residence of yours;

- (a) on an occasional basis for exclusive use as a residence;

- (b) in part, unless intended for use as a residence by more than two roomers or boarders; or

- (c) in part, as an incidental business or private garage;

- (4) when the dwelling on the residence premises is a two family dwelling and you occupy one part and rent or hold for rental the other part; or

- (5) to farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

5. This insurance does not apply to:

- a. bodily injury to an employee of an insured arising out of the residence premises as an incidental business other than to a residence employee while engaged in the employee's employment by an insured;

- b. bodily injury to a pupil arising out of corporal punishment administered by or at the direction of the insured;

- c. liability arising out of any acts, errors or omissions of an insured, or any other person for whose acts an insured is liable, resulting from the preparation or approval of data, plans, designs, opinions, reports, programs, specifications, supervisory inspections or engineering services in the conduct of an insured's incidental business involving data processing, computer consulting or computer programming; or

- d. any claim made or suit brought against any insured by:

- (1) any person who is in the care of any insured because of child care services provided by or at the direction of:

- (a) any insured;

- (b) any employee of any insured; or

- (c) any other person actually or apparently acting on behalf of any insured; or

- (2) any person who makes a claim because of bodily injury to any person who is in the care of any insured because of child care services provided by or at the direction of:

- (a) any insured;

- (b) any employee of any insured; or

- (c) any other person actually or apparently acting on behalf of any insured.



Coverage M does not apply to any person indicated in (1) and (2) above:

This exclusion does not apply to the occasional child care services provided by any Insured, or to the part-time child care services provided by any Insured who is under 19 years of age.

**Option JF - Jewelry and Furs.** Jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones, gold other than goldware, silver other than silverware and platinum are insured for accidental direct physical loss or damage.

The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. we do not insure for any loss to the property described in this option either consisting of, or directly and immediately caused by, one or more of the following:
  - a. mechanical breakdown, wear and tear, gradual deterioration;
  - b. insects or vermin;
  - c. inherent vice; or
  - d. seizure or destruction under quarantine or customs regulations;
2. our limit for loss by any Coverage B peril except theft is the limit shown in the Declarations for Coverage B, plus the aggregate limit;
3. our limits for loss by theft are those shown in the Declarations for this option; and
4. our limits for loss by any covered peril except those in items 2. and 3. are those shown in the Declarations for this option.

**Option OL - Building Ordinance or Law.**

**1. Coverage Provided.**

The total limit of insurance provided by this Building Ordinance or Law provision will not exceed an amount equal to the Option OL percentage shown in the Declarations of the Coverage A limit shown in the Declarations at the time of the loss, as adjusted by the inflation

coverage provisions of the policy. This is an additional amount of insurance and applies only to the dwelling.

**2. Damaged Portions of Dwelling.**

When the dwelling covered under **COVERAGE A - DWELLING** is damaged by a Loss Insured we will pay for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

**3. Undamaged Portions of Damaged Dwelling.**

When the dwelling covered under **COVERAGE A - DWELLING** is damaged by a Loss Insured we will also pay for:

- a. the cost to demolish and clear the site of the undamaged portions of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs; and
- b. loss to the undamaged portion of the dwelling caused by enforcement of any ordinance or law if:
  - (1) the enforcement is directly caused by the same Loss Insured;
  - (2) the enforcement requires the demolition of portions of the same dwelling not damaged by the same Loss Insured;
  - (3) the ordinance or law regulates the construction or repair of the dwelling, or establishes zoning or land use requirements at the described premises; and
  - (4) the ordinance or law is in force at the time of the occurrence of the same Loss Insured; or
- c. the legally required changes to the undamaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

4. Building Ordinance or Law Coverage Limitations.

We will not pay more under this coverage than:

- a. the reasonable and necessary increased cost to repair or rebuild the dwelling at the same premises, or if relocation is required by ordinance or law, at another premises in the same general vicinity; and
- b. the reasonable and necessary cost to demolish and clear the site of the undamaged portions of the dwelling caused by enforcement of building, zoning or land use ordinance or law.

We will never pay for more than a dwelling of the same height, floor area and style on the same or similar pre-

mises as the dwelling, subject to the limit provided in paragraph 1. Coverage Provided of this option.

If the dwelling is located in an area which is eligible for coverage through the Texas Windstorm Insurance Association, the coverage described above, also applies to the increased cost you incur due to repair, replacement or demolition required for the dwelling to comply with the building specifications contained in the Texas Windstorm Insurance Association's plan of operation.

Option SG - Silverware and Goldware Theft. The COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability, Item h., for theft of silverware and goldware is increased to be the amount shown in the Declarations for this option.

SERVICE OF PROCESS - Service of Process may be had upon the State Official duly designated for such purpose in the state in which the property insured hereunder is located if State Farm Lloyds, Inc. is licensed in such state; or upon the duly appointed Attorney-in-Fact for State Farm Lloyds, Inc. at Dallas, Texas. Underwriters at State Farm Lloyds, Inc. have complied with the laws of the State of Texas regulating Lloyds plan insurance and said statutes are hereby made a part of the policy. The entire assets of State Farm Lloyds, Inc. supports its policies, but each individual underwriter's liability is several and not joint and is limited by law to the amount fixed by his/her underwriter's contract and subscription and no underwriter is liable as a partner. This policy is made and accepted subject to the foregoing stipulations and conditions together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto, and no agent or other representative of State Farm Lloyds, Inc. shall have the power to waive any provision or condition of this policy. This policy is non-assessable and no contingent liability of any kind and character attaches to the insured named herein.

IN WITNESS WHEREOF, the Company has executed and attested these presents.

State Farm Lloyds

By:

Secretary  
State Farm Lloyds, Inc.  
Attorney-in-Fact

President  
State Farm Lloyds, Inc.  
Attorney-in-Fact

## FUNGUS (INCLUDING MOLD) EXCLUSION ENDORSEMENT

### DEFINITIONS

The following definition is added:

"fungus" means any type or form of fungus, including mold, mildew, mycotoxins, spores, scents or byproducts produced or released by fungi.

### SECTION I - LOSSES INSURED

Item 12.d. is replaced with the following:

d. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, or wet or dry rot.

Item 13.b. is replaced with the following:

b. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, or wet or dry rot.

### SECTION I - LOSSES NOT INSURED

Item 1.i. is replaced with the following:

i. wet or dry rot;

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In Item 2., the following is added as item g.:

g. Fungus. We also do not cover:

(1) any loss of use or delay in rebuilding, repairing or replacing covered property, including any associated cost or expense, due to interference at the residence premises or location of the rebuilding, repair or replacement, by fungus;

(2) any remediation of fungus, including the cost to:

(a) remove the fungus from covered property or to repair, restore or replace that property; or

(b) tear out and replace any part of the building or other property as needed to gain access to the fungus; or

(3) the cost of any testing or monitoring of air or property to confirm the type, absence, presence or level of fungus, whether performed prior to, during or after removal, repair, restoration or replacement of covered property.

All other policy provisions apply.

SF PROD 0190  
[Fuentes]

**SPECIAL LIMITS ENDORSEMENT**

**SECTION I - COVERAGES, COVERAGE B - PERSONAL PROPERTY**

**Special Limits of Liability**

1. Item a. is changed to read:

a. \$200 on money, coins and medals, including any of these that are a part of a collection, bank notes, bullion, gold other than goldware, silver other than silverware, and platinum.

2. The following item is added:

\$1,000 for loss by theft of jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones.

All other policy provisions apply.

FE-525B  
(8/96)

SF PROD 0191  
[Fuentes]

## WATER DAMAGE ENDORSEMENT

### DEFINITIONS

The following definition is added:

"fungus" means any type or form of fungus, including mold, mildew, mycotoxins, spores, scents or byproducts produced or released by fungi.

### SECTION I - ADDITIONAL COVERAGES

The following is added:

#### Water Damage Coverage

1. We cover the deterioration, wet rot or dry rot of property described in Coverage A and Coverage B caused by the continuous or repeated seepage or leakage of water or steam from a:

- a. heating, air conditioning or automatic fire protective sprinkler system;
- b. household appliance; or
- c. plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors.

This coverage includes the cost of tearing out and replacing any part of the building necessary to repair the system or appliance from which seepage or leakage occurred.

2. We do not cover:

- a. loss to the system or appliance from which the water or steam escaped;
- b. loss caused by, consisting of, or resulting from fungus; or
- c. fungus which is the result of continuous or repeated seepage or leakage of water or steam from a:
  - (1) heating, air conditioning or automatic fire protective sprinkler system;
  - (2) household appliance; or
  - (3) plumbing system, including from, within, or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors.

### SECTION I - LOSSES INSURED

#### COVERAGE B - PERSONAL PROPERTY

The following revisions are made for the purpose of this endorsement only.

Item 12. is replaced with the following:

12. Sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or from within a household appliance.

Except as specifically provided by this endorsement, this peril does not include loss:

- a. to the system or appliance from which the water or steam escaped;
- b. caused by or resulting from freezing;
- c. caused by or resulting from water or sewage from outside the residence premises plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or
- d. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, or wet or dry rot.

Item 13. is replaced with the following:

13. Sudden and accidental tearing asunder, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

Except as specifically provided by this endorsement, this peril does not include loss:

- a. caused by or resulting from freezing; or
- b. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, or wet or dry rot.

### SECTION I - LOSSES NOT INSURED

The following revisions are made for the purposes of this endorsement only.

Item 1.f. is replaced with the following:

- f. except as specifically provided by this endorsement, continuous or repeated seepage or leakage of water or steam from a:
  - (1) heating, air conditioning or automatic fire protective sprinkler system;
  - (2) household appliance; or
  - (3) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or

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SF PROD 0192  
[Fuentes]

other plumbing fixture, including their walls, ceilings or floors;

which occurs over a period of time. If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped;

Item 1.g. is replaced with the following:

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g. wear, tear, marring, scratching, inherent vice, latent defect or mechanical breakdown;

Item 1.f. is deleted.

Item 1.i. is replaced with the following:

i. settling, cracking, shrinking, bulging, or expansion of pavements, patios or foundations;

Except as stated in this endorsement we do not provide coverage for any loss described in SECTION I - LOSSES NOT INSURED.

All other policy provisions apply.

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[Fuentes]



## COVERAGE A LOSS SETTLEMENT ENDORSEMENT

### SECTION I - LOSS SETTLEMENT

#### COVERAGE A - DWELLING (Applicable to HOMEOWNERS POLICY)

##### A1 - Replacement Cost Loss Settlement - Similar Construction is replaced with the following:

- a. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:

(1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property;

(2) when the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;

(3) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed; and

(4) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option OL - Building Ordinance or Law Coverage.

- b. Wood Fences: We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

##### A2 - Replacement Cost Loss Settlement - Common Construction is replaced with the following:

- a. We will pay the cost to repair or replace with common construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:

(1) we will pay only for repair or replacement of the damaged part of the property with common construction techniques and materials commonly used by the building trades in standard new construction. We will not pay the cost to repair or replace obsolete, antique or custom construction with like kind and quality;

(2) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property as described in a.(1) above;

(3) when the repair or replacement is actually completed as described in a.(1) above, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;

(4) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed; and

(5) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option OL - Building Ordinance or Law Coverage.

- b. Wood Fences: We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

### SECTION I - LOSS SETTLEMENT

#### COVERAGE A - BUILDING PROPERTY (Applicable to CONDOMINIUM UNITOWNERS POLICY)

This section is replaced with the following:

1. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the Declarations, the damaged part of the building property covered under SECTION I - COVERAGES, COVERAGE A - BUILDING PROPERTY, except for wood fences, subject to the following:

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[Fuentes]

a. until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property;

b. when the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;

c. to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed; and

d. we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure.

2. Wood Fences: We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - BUILDING PROPERTY.

#### OPTIONAL POLICY PROVISIONS

##### Option ID - Increased Dwelling Limit (Applicable to HOMEOWNERS POLICY)

This section is replaced with the following:

Option ID - Increased Dwelling Limit. We will settle losses to damaged building structures covered under COVERAGE A - DWELLING according to the SECTION I - LOSS SETTLEMENT provision shown in the Declarations.

If the amount you actually and necessarily spend to repair or replace damaged building structures exceeds the applicable limit of liability shown in the Declarations, we will pay the additional amounts not to exceed:

1. the Option ID limit of liability shown in the Declarations to repair or replace the Dwelling; or
2. 10% of the Option ID limit of liability to repair or replace building structures covered under COVERAGE A - DWELLING, Dwelling Extension.

**Report Increased Values.** You must notify us within 90 days of the start of any new building structure costing \$5,000 or more; or any additions to or remodeling of building structures which increase their values by \$5,000 or more. You must pay any additional premium due for the increased value. We will not pay more than the applicable

limit of liability shown in the Declarations, if you fail to notify us of the increased value within 90 days.

##### Option QL - Building Ordinance or Law. (Applicable to HOMEOWNERS POLICY)

This section is replaced with the following:

#### 1. Coverage Provided.

The total limit of insurance provided by this Building Ordinance or Law provision will not exceed an amount equal to the Option QL percentage shown in the Declarations of the Coverage A limit shown in the Declarations at the time of the loss, as adjusted by the inflation coverage provisions of the policy. This is an additional amount of insurance and applies only to the dwelling.

#### 2. Damaged Portions of Dwelling.

When the dwelling covered under COVERAGE A - DWELLING is damaged by a Loss Insured we will pay for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

#### 3. Undamaged Portions of Damaged Dwelling.

When the dwelling covered under COVERAGE A - DWELLING is damaged by a Loss Insured we will also pay for:

a. the cost to demolish and clear the site of the undamaged portions of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs; and

b. loss to the undamaged portion of the dwelling caused by enforcement of any ordinance or law if:

(1) the enforcement is directly caused by the same Loss Insured;

(2) the enforcement requires the demolition of portions of the same dwelling not damaged by the same Loss Insured;

(3) the ordinance or law regulates the construction or repair of the dwelling, or establishes zoning or land use requirements at the described premises, and

(4) the ordinance or law is in force at the time of the occurrence of the same Loss Insured; or

c. the legally required changes to the undamaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the

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[Fuentes]

Def Ex. 1-38

J036



enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

4. Building Ordinance or Law Coverage Limitations.

a. We will not pay for any increased cost of construction under this coverage:

(1) until the dwelling is actually repaired or replaced at the same or another premises in the same general vicinity; and

(2) unless the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.

b. We will not pay more for loss to the undamaged portion of the dwelling caused by the enforcement of any ordinance or law than:

(1) the depreciated value of the undamaged portion of the dwelling, if the dwelling is not repaired or replaced;

(2) the amount you actually spend to replace the undamaged portion of the dwelling if the dwelling is repaired or replaced.

c. We will not pay more under this coverage than the amount you actually spend:

(1) for the increased cost to repair or rebuild the dwelling at the same or another premises in the same general vicinity if relocation is required by ordinance or law; and

(2) to demolish and clear the site of the undamaged portions of the dwelling caused by enforcement of building, zoning or land use ordinance or law.

We will never pay for more than a dwelling of the same height, floor area and style on the same or similar premises as the dwelling, subject to the limit provided in paragraph 1. Coverage Provided of this option.

If the dwelling is located in an area which is eligible for coverage through the Texas Windstorm Insurance Association, the coverage described above, also applies to the increased cost you incur due to repair, replacement or demolition required for the dwelling to comply with the building specifications contained in the Texas Windstorm Insurance Association's plan of operation.

All other policy provisions apply.

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[Fuentes]

Def Ex. 1-39

J037

## MOTOR VEHICLE ENDORSEMENT

### DEFINITIONS

The definition of "motor vehicle" is replaced by the following:

"motor vehicle", when used in Section II of this policy, means:

- a. a land motor vehicle designed for travel on public roads or subject to motor vehicle registration;
- b. a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration;
- c. a "recreational vehicle" while off an insured location. "Recreational vehicle" means a motorized vehicle designed for recreation principally off public roads that is owned or leased by an insured. This includes, but is not limited to, a motorized all terrain vehicle, amphibious vehicle, dune buggy, go-cart, golf cart, snowmobile, trailbike, minibike and personal assistive mobility device;
- d. a "locomotive" while off an insured location. "Locomotive" means a self-propelled vehicle for pulling or pushing freight or passenger cars on tracks that is large enough to carry a person and is owned or leased by an insured;

e. a bulldozer, track loader, backhoe, high-hoe, trencher, grader, crane, self-propelled scraper, excavator, pipe-layer, cherry picker, telehandler, logging vehicle, mining vehicle or road building vehicle that is owned or leased by an insured while off an insured location;

f. any vehicle while being towed or pushed by or carried on a vehicle included in a., b., c., d. or e.;

g. the following are not motor vehicles:

(1) a motorized land vehicle in dead storage on an insured location;

(2) a boat, camp, home or utility trailer not being towed or pushed by or carried on a vehicle included in a., b., c., d. or e.;

(3) a motorized golf cart while used for golfing purposes;

(4) a motorized vehicle or trailer designed to assist the handicapped that is not designed for travel on public roads or subject to motor vehicle registration;

h. "leased" does not include temporary rental.

All other policy provisions apply.

FE-6452

SF PROD 0197  
[Fuentes]

## TELECOMMUTER COVERAGE

### SECTION I - COVERAGES COVERAGE A - DWELLING

The following replaces item 2.b :

- b. used in whole or in part for business purposes unless such use consists solely of use of office space for paperwork, computer work or use of a telephone, and consists solely of activities that are:
  - (1) duties of the insured's employment by another; and
  - (2) performed solely by the insured.

FE-5831

SF PROD 0198  
[Fuentes]

Def Ex. 1-41

J039

## SUIT AGAINST US ENDORSEMENT

SECTION I - CONDITIONS Suit Against Us, is replaced with the following:

Suit Against Us. No suit or action can be brought unless the policy provisions have been complied with. Suit or action brought against us must be started within two years and one day after the cause of action accrues.

All other policy provisions apply.

FE-5503

SF PROD 0199  
[Fuentes]

Def Ex. 1-42

J040

## DWELLING FOUNDATION ENDORSEMENT

### SECTION I - ADDITIONAL COVERAGES

The following is added:

**Dwelling Foundation Coverage.** We cover loss caused by and consisting of settling, cracking, shrinking, bulging, or expansion of the foundation, floor slab or footings that support the dwelling caused by seepage or leakage of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system.

This coverage includes the cost of tearing out and replacing any part of the building necessary to repair the system from which the leakage or seepage occurred.

We do not cover loss to the system from which the water or steam escaped.

**Limit of Liability.** Our limit of liability for this coverage will not exceed an amount equal to 15% of the COVERAGE A - DWELLING limit applicable on the date of the loss.

### SECTION I - LOSSES NOT INSURED

The following revisions are made for the purposes of this endorsement only.

Item 1.f. is replaced with the following:

- f. except as specifically provided by this endorsement, continuous or repeated seepage or leakage of water or steam from a:

- (1) heating, air conditioning or automatic fire protective sprinkler system;
- (2) household appliance; or
- (3) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors;

which occurs over a period of time. If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped.

Item 1.i. is replaced with the following:

- i. except as specifically provided by this endorsement, settling, cracking, shrinking, bulging, or expansion of pavements, patios, walls, floors, roofs or ceilings;

Except as stated in this endorsement we do not provide coverage for any loss described in SECTION I - LOSSES NOT INSURED.

All other policy provisions apply.

FE-5368.1

## AMENDATORY ENDORSEMENT (Texas)

### SECTION I - CONDITIONS

Insurable Interest and Limit of Liability is replaced by the following:

Insurable Interest and Limit of Liability. Even if more than one person has an insurable interest in the property covered, we will not be liable:

- a. to the insured for an amount greater than the insured's interest, or
- b. for more than the applicable limit of liability.

Fire Insurance: Total Loss Of Real Property. A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. This subsection does not apply to personal property.

The SERVICE OF PROCESS provision, which follows the OPTIONAL POLICY PROVISIONS section of the policy, is replaced with the following:

SERVICE OF PROCESS - Service of Process may be had upon the State Official duly designated for such purpose in the state in which the property insured hereunder is located if State Farm Lloyds is licensed in such state; or upon the Commissioner of Insurance of the State of Texas; or upon the duly appointed Attorney-in-Fact for State Farm Lloyds at Dallas, Texas. Underwriters at State Farm Lloyds have complied with the laws of the State of Texas regulating Lloyds plan insurance and said statutes are hereby made a part of the policy. The entire assets of State Farm Lloyds supports its policies, but each individual underwriter's liability is several and not joint and is limited by law to the amount fixed by his/her underwriter's contract and subscription and no underwriter is liable as a partner. This policy is made and accepted subject to the foregoing stipulations and conditions together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto, and no agent or other representative of State Farm Lloyds shall have the power to waive any provision or condition of this policy. This policy is non-assessable and no contingent liability of any kind and character attaches to the insured named herein.

All other policy provisions apply.

FE-2200.1

SF PROD 0201  
[Fuentes]